

1

2

3

4

5

6

7

8

WORKER ADVOCACY ADVISORY

9

PUBLIC HEARING AND COMMITTEE MEETING

10

Doubletree Hotel

11

Westminster, Colorado

12

August 29, 2001

13

14

15

16

17

18

19

20

21

22

23

24

25

CARPENTER REPORTING, INC.
(303) 752-1200

1 (The following proceedings were had at 8:11
2 a.m.)

3 CHAIRWOMAN SPIELER: I'd like to call
4 this meeting to order, please.

5 Good morning. I'd like to welcome you
6 to -- is this working -- to the public -- to the public
7 meeting of the Workers' Advocacy Advisory Committee.

8 We'll be meeting today from now until
9 about 2:45 this afternoon, when a number of people are
10 going to have to leave. I'm not sure we'll have a
11 quorum after that point, so if we have to cut in on --
12 on our lunch hour, we may have to do that just -- we'll
13 see.

14 It's been the practice of this committee
15 to go around the room and have everybody in the room
16 introduce themselves before we get started, and I would
17 like to do that today.

18 My name is Emily Spieler, and I am
19 chairman of this committee. Les, would you like to
20 start off, please.

21 MR. BODEN: My name is Les Boden, and
22 aside from my mouth being full, I'm a professor at
23 Boston University School of Public Health.

24 MS. HATFIELD: My name is Vikki
25 Hatfield, and I'm the community representative and I'm

CARPENTER REPORTING, INC.
(303) 752-1200

1 from Oak Ridge, Tennessee.

2 MR. OLSEN: My name is Mark Olsen. I'm
3 from the Idaho National Engineering and Environmental
4 Laboratory.

5 MR. ELLENBERGER: I'm Jim Ellenberger.
6 I'm a consultant with PACE International Union.

7 MR. ELISBURG: I'm Don Elisburg. I'm an
8 attorney from Potomac, Maryland.

9 MS. POST: Iris Post, I'm the Iowa
10 worker's compensation commissioner, representing the
11 state of Iowa.

12 MR. SHOR: Glenn Shor from the
13 California Division of Worker's Compensation,
14 representing the State of California.

15 MR. BURTON: John Burton, professor at
16 Rutgers University in New Jersey.

17 DR. MUELLER: Kathryn Mueller. I am an
18 occupational medicine physician. I'm an associate
19 professor at the University of Colorado Health Sciences
20 Center.

21 MR. BLEA: My name is Rick Blea. I'm a
22 labor member from the union.

23 DR. MARKOWITZ: Steve Markowitz. I'm a
24 professor at the City University of New York, and an
25 occupational medicine physician.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MS. CISCO: I'm Jeanne Cisco. I'm from
2 Portsmouth Gaseous Diffusion Plant. I'm with PACE and
3 I'm a member representative.

4 DR. WAGNER: I'm Greg Wagner, and I'm an
5 occupational medicine physician working for the
6 National Institutes for Occupational Safety & Health,
7 but I'm not here representing the National Institute
8 for Occupational Safety & Health.

9 MR. ELLIOTT: I'm Larry Elliott, with
10 the National Institute for Occupational Safety &
11 Health, the director of office of compensation analysis
12 and support.

13 MR. CARY: I'm Steve Cary, the acting
14 Assistant Secretary for environmental safety and health
15 for the Department of Energy. Since Paul Seligman's
16 departure, I'm also the acting director of the Office
17 of Worker Advocacy.

18 CHAIRWOMAN SPIELER: I'd like to note
19 there are a couple of people who are absent: Dr. Laura
20 Welch and Len Martinez were both unable to join us for
21 this meeting. And since our last meeting, we've had a
22 couple of resignations from this committee.
23 Dr. Rudolph resigned because of accepting a new -- a
24 new job, and Inga Taylor resigned because of her own --
25 her other job responsibilities.

CARPENTER REPORTING, INC.
(303) 752-1200

1 I'd like to ask the people sitting in
2 the room, since there aren't very many of you, to
3 introduce yourselves, and I gather there's someone on
4 the telephone? Two people on the telephone who I would
5 also have -- introduce them for the record, please.

6 Will those of you who are on the
7 telephone please introduce yourselves?

8 MR. MICHAEL: David Michael.

9 MS. GANGI: Claudia Gangi, with Justice.

10 CHAIRWOMAN SPIELER: I didn't get the
11 second name. I'm sorry.

12 MS. GANGI: Claudia Gangi.

13 CHAIRWOMAN SPIELER: Okay. Right.
14 Okay. The rest of you.

15 MR. McDOUGAL: I'm Vern McDougal. I'm a
16 contractor, NEH.

17 MR. FALCO: I'm Joe Falco. I'm with the
18 DOE Office of Worker Advocacy.

19 MS. KIMPAN: Kate Kimpan. I'm with the
20 DOE Office of Worker Advocacy.

21 MR. KOHLER: Ronald Kohler, representing
22 the Homesteaders, which is a retiree organization from
23 Rocky Flats.

24 MS. LUTZ: Karen Lutz with the
25 Department of Energy at Rocky Flats.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. LEETZ: Gary Leetz, Department of
2 Energy, Rocky Flats.

3 MR. BISTLINE: Al Bistline, Department
4 of Energy, Rocky Flats.

5 CHAIRWOMAN SPIELER: Welcome to
6 everyone. We have a pretty full agenda today. I'd
7 particularly like to welcome Mr. Cary to our meeting.

8 Before we proceed, we have two sets of
9 minutes, I think, that we have not reviewed and
10 accepted the minutes from the -- I'm sorry.

11 MR. BODEN: Could the person who is in
12 charge of the audio turn down the feedback we're
13 getting from the telephone people?

14 MS. KIMPAN: Could the callers hit the
15 mute buttons?

16 CHAIRWOMAN SPIELER: I'm sorry, but the
17 noise is very distracting. It's coming --

18 MR. BODEN: Turn it up.

19 CHAIRWOMAN SPIELER: There seems to be
20 some kind of feedback from the phone system. Thank
21 you.

22 We had minutes from two meetings: The
23 July 20th conference call and the meeting prior to
24 that, I believe, which -- in which we did not discuss
25 the minutes.

CARPENTER REPORTING, INC.
(303) 752-1200

1 DR. WAGNER: Maybe there's a mute button
2 that David and Claudia could use.

3 MR. BODEN: Why can't he just turn the
4 sound off that's coming into the room? You can't do
5 that?

6 AV OPERATOR: I can turn them all the
7 way down.

8 CHAIRWOMAN SPIELER: Okay. Are the
9 minutes acceptable in their current form or -- Greg?

10 DR. WAGNER: For the April 26, 27
11 minutes, I noticed a number of both editorial and some
12 substantive things that didn't seem quite right. I was
13 wondering if we could defer acceptance of the minutes
14 at this point until either later in this meeting or the
15 next meeting when we might have an opportunity to
16 suggest revisions.

17 CHAIRWOMAN SPIELER: I have no problem
18 with deferring consideration of the minutes from the
19 prior meetings. And -- but if there -- if we don't get
20 to it today, I would like to ask people to submit
21 revisions via e-mail to the other members of the
22 committee so that perhaps we can ratify the minutes and
23 not postpone it until a subsequent meeting. Is that
24 acceptable to everyone?

25 Okay. As is our tradition, we will

CARPENTER REPORTING, INC.
(303) 752-1200

1 start this meeting with status reports from the
2 representatives of the various components of the
3 implementation of the act: Department of Energy, the
4 Department of Labor and NIOSH and the Department of
5 Justice. I believe that Pete Turcic from DOL and
6 Claudia will be reporting to us by telephone.

7 I'd like to first turn this over --
8 Steve, did you want to go first? Mr. Cary?

9 MR. CARY: That's fine. It's a pleasure
10 to be here, and it was great having dinner and meeting
11 so many of you last night.

12 Since the last meeting, we've made a lot
13 of progress at our Resource Centers. From what I've
14 heard from my staff -- there's a mic right here. This
15 will work.

16 I think from your visit to the Resource
17 Center last night, some of our success has been borne
18 out with the way these were planned and designed and
19 staffed and trained.

20 We have ten Resource Centers that are
21 now up and running. I've looked at some of the
22 statistics recently and we're getting between -- the
23 first four weeks, between 7- to 900 claimants a week
24 coming into our centers. Some of the centers are
25 getting more than others. Oak Ridge is consistently

CARPENTER REPORTING, INC.
(303) 752-1200

1 getting more than 200 a week. Paducah is getting a lot
2 and so is Hanford, as well. Some of the other sites
3 aren't getting as many, but it's interesting that the
4 Espanola site, after a public meeting, the number
5 bounced right up, so it'll be a couple more months
6 before we start to see what the continuous traffic is.

7 When I talk about plant claimants coming
8 to the sites, there are really three ways that they
9 contact our Resource Center sites: Through telephones,
10 through scheduled interviews, or just walking in.

11 In talking with our folks at Oak Ridge
12 who do the interviews, they are saying it's taking
13 about an hour per claimant. And I think over time,
14 that will probably diminish, but we feel it's
15 appropriate now because many of the folks coming in are
16 elderly, many families are coming in, and they are not
17 familiar with DOE or what's going on.

18 So it ends up being a very fruitful and
19 sensible use of the time of the folks at the Resource
20 Centers to get the claimants up to speed and to answer
21 their questions and make them feel comfortable with the
22 program.

23 One of our concerns is outreach beyond
24 the sites where we have Resource Centers and we're
25 planning, with the Department of Labor, to go to

CARPENTER REPORTING, INC.
(303) 752-1200

1 southern California next month and to Amarillo and have
2 satellite offices that will be open and a facility like
3 this, ballroom, in a hotel, motel -- we'll advertise
4 before we get there -- and we'll have trained Resource
5 Center folks from some of the offices, the Resource
6 Centers that aren't busy essentially in motion, going
7 to those locations where we need to get a presence.

8 And our hope is to make sure we hit the
9 major metropolitan areas and the major regions of the
10 country where we would have former workers. That would
11 be a -- a benefit from -- from having an office and
12 getting information about the program.

13 The second item I want to talk about is
14 our position panel rule. We've been working for the
15 last three weeks with OMB and the Department of Labor
16 and Health and Human Services to get a rule out.
17 We've -- just before I came here, I prepared the
18 correspondence to the Secretary so that the rule could
19 be published. Our hope is the rule will be published
20 in the Federal Register next week. It's a proposed
21 rule out for a 30-day comment period.

22 Once we get the Secretary's signoff, we
23 will get you copies of the rule as quickly as possible.

24 What we have found in dealing with the
25 other agencies is that there was a -- a considerable

CARPENTER REPORTING, INC.
(303) 752-1200

1 divergence of opinion on the roles of DOE, States, and
2 the physician panels. So what we did was invite
3 comment, really, on a series of -- of possible options
4 so that -- so that we can get as much information as we
5 can from the public, from our stakeholders, and move
6 forward with a rule, hopefully, in a month and a half
7 and get the program started.

8 The final item I have are the State
9 memoranda of understanding, State MOU's. Kate Kimpan
10 has been working since last October, communicating with
11 the various states that are going to be important in --
12 in administering what really is the DOE part of the
13 program.

14 In the course -- since the last meeting,
15 we've sent out a generic MOU to the States to give them
16 some sense of where we plan to go. We've been advised
17 by general counsel at DOE not to proceed further until
18 we see the outcome of the physician panel rule because
19 that'll -- that'll have a lot to do with our
20 relationship, our dealings with the States.

21 What we're trying to focus on, so we can
22 get the program up quickly, are those states that have
23 flexibility where we already have a good relationship,
24 so that at least in those states, once the rule goes
25 through, we can move quickly with the MOU to get the

CARPENTER REPORTING, INC.
(303) 752-1200

1 program started and -- and use those sites as models
2 for the rest of the states as it's appropriate.

3 And that's my report. There are many
4 other things going on, but I don't want to steal
5 thunder from HHS and DOL.

6 CHAIRWOMAN SPIELER: Maybe it would be
7 appropriate for people to ask questions now of Mr. Cary
8 before we move on to the NIOSH, DOL, and DOJ reports.

9 MR. OLSEN: Steve, do you have any
10 statistics on how many claims to date have been filed
11 total?

12 MR. ELISBURG: The total is about 6,000.

13 MR. CARY: I have some as of last week.
14 This is as of August 18th. I have 2,634 here. Is
15 that -- is that the right number?

16 MR. FALCO: Repeat the question.

17 MS. KIMPAN: Total --

18 MR. CARY: Total number of claims filed.

19 MR. FALCO: The latest report we had had
20 us up to about 3600.

21 MR. CARY: 3600. This was as of the
22 18th.

23 MR. ELISBURG: At yesterday's claims
24 subcommittee processing subcommittee, John Eagan
25 advised us that there had been 6,000 claims filed for

CARPENTER REPORTING, INC.
(303) 752-1200

1 DOL and 200 claims filed for the worker's compensation.

2 Was that incorrect?

3 MR. CARY: No. He's my staff on this.

4 MR. EAGAN: I did not have a direct
5 count, Don, but it was -- under 200 have been filed so
6 far. Those are -- those are the requests for physician
7 panels. Not -- not claims.

8 MR. ELISBURG: But the other was you
9 told us that in the DOL side, there were 6,000 claims
10 filed.

11 MR. EAGAN: That's what we were informed
12 by DOL, and you should confirm that when they give
13 their presentation.

14 MR. ELISBURG: All my question is is it
15 3600 or 6,000? I'm not trying to hassle --

16 MR. EAGAN: They have received a
17 tremendous amount of mail-in materials from atomic
18 weapons employers, employees, and their families, so
19 there's no discrepancy in those numbers.

20 MR. OLSEN: What's the 6,000 for, what's
21 the 3600 for?

22 MS. KIMPAN: The 3600 are people that
23 have visited Resource Centers in total. From those, we
24 have a set of people that have requested to go before a
25 physicians' panel. That's between 2- and 300 where

CARPENTER REPORTING, INC.
(303) 752-1200

1 we're developing actual claims files at headquarters.
2 The 6,000 are what DOL reported to Jeff that they had
3 received from every aspect of their program around the
4 country, including, as Jeff points out, people that
5 wouldn't be eligible to go before a physicians' panel,
6 the atomic weapons employees and the like.

7 MR. ELISBURG: Excuse me. You're giving
8 us apples and oranges here. I think we need to know
9 what are the number of Federal claims that you're
10 considering the Department of Labor has?

11 MR. EAGAN: 6,000.

12 MS. KIMPAN: 6,000.

13 MR. ELISBURG: And that includes people
14 who have come to the Resource Centers and filed a
15 Federal claim?

16 MS. KIMPAN: It may, yes. Yes.

17 CHAIRWOMAN SPIELER: I see --

18 MR. ELISBURG: I don't want to quibble.

19 CHAIRWOMAN SPIELER: It seems to me that
20 questions with regard to the number of DOL claims, we
21 should address to Pete Turcic. I actually think we
22 should focus now on the OWA component of the program.

23 MR. ELISBURG: Excuse me. I am
24 trying -- I was about to give a report on behalf of the
25 subcommittee that was going to commend the Department

CARPENTER REPORTING, INC.
(303) 752-1200

1 of Energy for handling 6,000 Federal claims in a month.
2 I am then sitting here this morning being told that I
3 should only commend them for 3600 claims in the month.
4 That's fine. I'm trying to understand the information
5 I was given within the last 24 hours.

6 CHAIRWOMAN SPIELER: Okay. I think we
7 understand now.

8 MR. ELISBURG: That's all I want to
9 know. I'm not arguing about the 200.

10 CHAIRWOMAN SPIELER: Don, please, I'd
11 really like to move this meeting along. Thank you.

12 MR. BODEN: Another set of numbers that
13 I'm trying to put together, when we visited the local
14 Resource Center yesterday, they told us that they had
15 filed a request for a physician panel for everybody who
16 came to them. And I'm trying to now compare that,
17 which I think is about 300 people, just for the Rocky
18 Flats -- the Denver office with the 200 number that you
19 just gave me for the number of requests for physician
20 panels nationwide. So, again, if you could help me
21 understand how those two numbers fit together, I'd
22 appreciate it.

23 MR. FALCO: Most of our Resource Centers
24 have only been open for three weeks. Much of that
25 material is still coming in to DOE, so there is a lag

CARPENTER REPORTING, INC.
(303) 752-1200

1 there at -- they have seen approximately 100 people a
2 week. I don't think there's any concern at this point.
3 We -- much of this material is coming through our mail
4 processing department and then being routed to the
5 Office of Worker Advocacy.

6 MS. KIMPAN: Last week, Les, there were
7 nearly 300 claims files begun at the headquarters of
8 the Office of Advocacy, but I have to say, I, like
9 Steven and others, have been very involved in the rule
10 and they were coming in in stacks this big per day. So
11 any count that I gave you based on even Thursday --
12 Thursday and Friday, we're getting envelopes at least
13 this size from every center every day. So part of it
14 is about getting these logged in in a time clock way
15 and beginning a physical file that will become a
16 potential claims file.

17 You need to know that those, quote,
18 unquote, claims -- and that could be where there are
19 different numbers -- are very different things. If you
20 say who has really requested to go before a physicians'
21 panel, that's between 2- and 300 that we have in
22 headquarters per the middle of last week. There are
23 many forms that have come in.

24 Clearly, those filled out in association
25 with the Federal claim for which there is no request

CARPENTER REPORTING, INC.
(303) 752-1200

1 for wage replacement benefit, no request for an actual
2 review of condition, but merely I was exposed and am
3 preserving my future right to claim -- so the quality
4 of those requests, if you will, is quite variable.

5 There are people that say I have asbestosis and I'd
6 like to go before a panel and people who merely say I
7 have filled a DOL form and I filled this one out, too.

8 And there's a wide array of -- those 300
9 do not look at all uniform, other than they have come
10 on an OWA-1 saying a request to go before a physicians'
11 panel, associated often with a medical release and
12 associated often with a copy of the DOL claim file.

13 MR. BODEN: So just to try to clarify,
14 you have in hand at the national office 300 requests
15 for physician panel review. There may be any unknown
16 number of such requests that you have not yet logged,
17 either, because they haven't yet come into your office
18 or because you haven't opened up a package and logged
19 it?

20 MS. KIMPAN: Correct.

21 MR. BODEN: So this may not be a very
22 good time to get a feel for how many of these there
23 are.

24 MS. KIMPAN: We can certainly report out
25 to you at the end of each week. You know, how many

CARPENTER REPORTING, INC.
(303) 752-1200

1 we've logged in or at the end of the month, whatever
2 the appropriate period -- how many we've logged in and
3 done an actual physical file on. But it's, right now,
4 a quite moving number.

5 MR. BODEN: On the other hand, you have
6 this roughly 3200 files that have come in and,
7 presumably -- 3200 Federal requests that have come in
8 and presumably, there -- there wouldn't be any missing
9 requests for physician panels that were associated with
10 those files?

11 MS. KIMPAN: Someone could make --

12 MR. BODEN: It might be fair to think
13 that there's less than one in ten of those that
14 actually has a physician panel request?

15 MS. KIMPAN: Correct.

16 MR. CARY: I think what you're bringing
17 up is an interesting point. We have to come up with a
18 metric. Our metrics are targeted towards making sure
19 the Resource Centers are doing their job and seeing
20 what's going on. We need to translate that into
21 something that's more of a meaningful metric for the
22 public, and I think we'll have to start to do that.

23 CHAIRWOMAN SPIELER: And certainly, just
24 to follow up on Les's point, it would be useful to know
25 if only one in ten people who come into the Resource

CARPENTER REPORTING, INC.
(303) 752-1200

1 Centers are actually making requests for physician
2 panels who are filing DOL claims. That seems confusing
3 to me, and it would be nice to know why that would be
4 true. If it would be possible to do some inquiry in
5 that area.

6 Other questions? Steve, you had your
7 hand up.

8 DR. MARKOWITZ: Two questions. One is
9 what is the verbal report from Oak Ridge and Paducah,
10 for instance, which have received a lot of visits in
11 terms of the numbers of what state -- requests for
12 physician panel review. Just as we get a verbal report
13 out of Rocky Flats that virtually everybody is
14 submitting both a Federal claim plus the physician
15 panel request, what's the verbal report from those two
16 sites?

17 The second question is we heard last
18 night that people actually don't know what they have
19 submitted, what they are requesting, what they are
20 filing for. I wonder how -- it would seem the Resource
21 Center would be key, then, in steering people one way
22 or the other or both ways, and I'm wondering how the
23 Resource Centers are handling that.

24 MR. CARY: I should probably have
25 brought one of my Resource Center folks here or you

CARPENTER REPORTING, INC.
(303) 752-1200

1 could ask the folks here in Westminster about it
2 yesterday. The folks -- the folks in the Resource
3 Centers have been trained to help people fill out a
4 claim. And they are taking the information they have
5 to find what's the appropriate vehicle.

6 There's much greater interest, of
7 course, in the Federal program because of the lump sum.
8 And I know in some instances -- and I don't have
9 numbers for you. I have to get those. In some
10 instances, we have found that people are automatically
11 applying for both. And our only issue with that with
12 the Department of Labor is that we queue these so that
13 we're not -- we're not both producing the same amount
14 of work, but we can move on the decisions and the work
15 that's been done by the Department of Labor to award it
16 and slip stream on that and move ahead without having
17 to re-create a record in many other things.

18 That's the one thing we don't want is
19 two separate folders moving forward if there's some way
20 we can streamline that process. That's really what
21 we're working out.

22 And from my perspective, you know,
23 either -- either is fine. If folks want to apply for
24 the State program as well as the Federal program, they
25 can. And our people aren't discouraging folks from

CARPENTER REPORTING, INC.
(303) 752-1200

1 doing that.

2 If you want me to poll, I can poll our
3 Resource Centers and get some sense of -- of -- of
4 those numbers. It's not something -- I've got a whole
5 page of metrics here, but I don't have that breakdown.

6 CHAIRWOMAN SPIELER: Greg.

7 DR. WAGNER: At a prior meeting, we had
8 encouraged DOE and DOL to provide as -- as little
9 barrier as possible for people to come into the system
10 by coordinating between the agencies. Specifically, we
11 encouraged information to be -- information to be
12 disseminated from a single point of entry 800 number
13 between the two agencies. It seems to me that the --
14 that the common activities in the Resource Centers
15 really is a commendable step in the direction of giving
16 people a -- people from the outside don't necessarily
17 know, you know, what the DOL does and what the DOE has
18 responsibility for. Has there been other progress like
19 having a common 800 number for people to call in?

20 MR. CARY: Pete Turcic from DOL could
21 talk about this better, but they really have the lead
22 in this. And -- and even though we established a -- a
23 toll-free number, they have also established their own.
24 And I think we're just working at this from different
25 angles with different constituencies. We're trying to

CARPENTER REPORTING, INC.
(303) 752-1200

1 focus on those Resource Centers, the place where the
2 workers are and where their families are so we can help
3 them.

4 There does appear to be a little overlap
5 here, but I don't know if going to a single toll-free
6 number will help because there -- I mean,
7 organizationally, you know, it's claims centers, you
8 know, in the -- in Denver and other parts of the
9 country for DOL who are going to be responding to --
10 responding to questions and I just -- I think that's --

11 CHAIRWOMAN SPIELER: Just could you
12 explain what you mean by "different constituencies,"
13 because it seems to -- it seemed to me that it was the
14 same group of people who would be filing both of these
15 claims; that, in fact, it's the same constituency with
16 two different programs, not two different
17 constituencies. Am I misunderstanding?

18 MR. CARY: I think it's just point of
19 view. When we go around the country, we're going to be
20 looking at the atomic weapons employers -- employees,
21 you know, which is -- which is different from the --
22 the traditional DOE employee, contractor employee
23 constituency. I see that as a different group.

24 CHAIRWOMAN SPIELER: An additional
25 constituency?

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. CARY: Yeah.

2 CHAIRWOMAN SPIELER: Not a -- okay.
3 Steve.

4 DR. MARKOWITZ: In the last version of
5 the proposed -- the draft proposed rules for physician
6 panels, it was very prominently featured that the
7 physician panels would have to follow State law in
8 making a determination of causality. Is that still
9 included in the -- in the proposed rules?

10 MR. CARY: Yes, it is.

11 DR. MARKOWITZ: Well, you'll be here
12 through the day because we have strong objections to
13 that, but we can hold off on those until later.

14 MR. CARY: Other agencies did, as well.
15 The Department of Labor had a number of comments about
16 that, so as -- as the rule is posed, we're interested
17 in -- in getting additional comment on that.

18 Our position derives from the -- the
19 legal position of our general counsel's office that it
20 would require a new Federal law to supersede State law.

21 CHAIRWOMAN SPIELER: Just a follow-up
22 question I have on that, also. Is this -- are the same
23 people in the general counsel's office giving advice on
24 these rules as previously designed the defense of -- of
25 worker's compensation claims from prior

CARPENTER REPORTING, INC.
(303) 752-1200

1 administrations?

2 MR. CARY: It's -- I don't know if you
3 know Ben McCrea and Neil Strauss. They have been doing
4 this for six or seven months. And I don't know if they
5 have an ax to grind in this area, although we do have a
6 new general counsel. You know, there is a little
7 different direction coming out of that office, as well.

8 CHAIRWOMAN SPIELER: Other questions?
9 Vikki.

10 MS. HATFIELD: Do you think that as you
11 move forward and we get the physicians' panels in place
12 and we're better able to discuss the DOE side, that
13 we're going to have more people applying? Do you think
14 that's the reason that maybe we just haven't been as
15 open about that as we have been the DOL process?

16 Because I really feel like that there
17 are people out there that don't understand that that's
18 available to them, although they don't have one of the
19 illnesses that's covered on the DOL side, they still
20 feel like they are out there by themselves, because
21 they are not going to get anything at all. No help.

22 So I'm just wondering if maybe we
23 haven't said enough about it, if we haven't presented
24 it quite right somehow -- I don't know. But I really
25 feel like that maybe we haven't said enough about, you

CARPENTER REPORTING, INC.
(303) 752-1200

1 know -- although maybe you don't qualify for this,
2 let's talk about what you do qualify for over on the --
3 on the DOE side. And I think that's something that we
4 need to really use the Resource Centers for instead of
5 just signing the papers and moving on. They need to
6 really have an understanding about what these -- what's
7 available and what -- you know, just like we heard last
8 night from the audience that these people were signing
9 papers, but they didn't know what they were signing
10 for.

11 Well, I think it's really important that
12 they have an understanding about the DOE side as well
13 as the DOL side. And maybe it's because we're not
14 there yet, because we're not in place that we haven't
15 really brought that to the forefront, but I think it's
16 really, really important that we do that in a timely
17 fashion.

18 I think it's going to cut down on the
19 nontrust and the adversary environment that you have
20 from some workers because they feel like there are
21 people who are getting it and I'm just as sick as they
22 are and I just don't have anything.

23 So I think that we really, really,
24 really need to try to bring this to the forefront. Is
25 that the thought that maybe we're -- we're just not

CARPENTER REPORTING, INC.
(303) 752-1200

1 there? We don't want too many people applying until we
2 get there?

3 MR. CARY: No. I don't think that's it
4 at all. I think what's going to happen is the first
5 time there are awards for the State program, that that
6 will -- that will rekindle interest in the State
7 program. I also think that we're trying to get as many
8 folks as possible directed to the Federal program so
9 they can get those significant benefits.

10 I think there's going to be a secondary
11 wave of folks who don't get into the Federal program
12 that will be coming to us then. And we'll still be
13 there and that will be a -- we'll still be there in
14 that role and they will come to us and say, What do I
15 do now? And then we tell them what their other options
16 are in the State program.

17 MS. HATFIELD: Don't you think if we had
18 told them on that on the forefront that we might have
19 been better off --

20 MR. CARY: We're not disguising that up
21 front. I think their mind is on the bigger prize right
22 now.

23 CHAIRWOMAN SPIELER: Thank you. Jim.

24 MR. ELLENBERGER: Steve, as will come as
25 no surprise to you, there's an immense amount of

CARPENTER REPORTING, INC.
(303) 752-1200

1 frustration around the country with the slow pace of
2 getting the Office of Worker Advocacy assistance on
3 State claims up and running, physician panels and --
4 and actually seeing some claims move forward. And we
5 are hearing from PACE locals and I talked to other
6 groups of representative workers that there's a lot of
7 discussion going on at the sites about whether or not
8 the State claims -- claims that go forward under the
9 State system through this process, assuming that it
10 follows the process, are going to be accepted by the
11 contractors.

12 The law is pretty clear that if -- that
13 if the physician panels find that these are legitimate
14 claims, that the DOE will instruct its contractors not
15 to contest them. And we are hearing from multiple
16 locations that contractors are telling workers that
17 they are going to contest claims and that they are very
18 unhappy because it's not clear who is going to pay for
19 these claims.

20 And what I'm asking is I think it really
21 comes down to dollars and cents. The attitude of
22 contractors and employers is going to be dictated by
23 who ends up bearing the burden. And it's unclear to me
24 and I think to a lot of members of the committee what
25 the -- the decision of the Department of Energy is

CARPENTER REPORTING, INC.
(303) 752-1200

101

4 MR. CARY: In order for us to produce
5 this rule, we had to produce for OMB estimates of cost
6 of the program, of the State component of the program.
7 And in the course of doing that, working with the chief
8 financial officers, for example, we found that there
9 were some monstrous and incorrect estimates that have
10 been made by some of the -- some of the -- some of the
11 field sites about the -- an onerous cost arising out of
12 the State program.

13 And we actually did our own in-house
14 analysis with the people in the CFO's office and we
15 were able to come up with an estimate that -- that is
16 not going to break the contractor's back. They are
17 talking about -- at Oak Ridge, they are talking about a
18 bill of \$240 million, which is just way out of the
19 ballpark. Just completely in error. And the -- the --

20 MR. ELLENBERGER: What was that figure
21 again?

22 MR. CARY: 240 million.

23 MR. ELLENBERGER: At one site? Oak
24 Ridge?

25 MR. CARY: Just for the State component.

CARPENTER REPORTING, INC.
(303) 752-1200

1 So we've created a set of numbers we think are -- are
2 appropriate and the -- the understanding now in the
3 Department of Energy is that the contractors will --
4 will pay that. There will be no question of that.

5 MR. OLSEN: What is that estimate,
6 Steve? Are you saying --

7 MR. CARY: I --

8 MS. KIMPAN: Administration and benefits
9 or just benefits?

10 MR. CARY: It's in the neighborhood --
11 it's in -- I'll get you the exact number once we have
12 the rule published because it's part of that. It's --
13 it's a numb -- it's in the neighborhood of \$150 million
14 over ten years for the whole complex.

15 MR. BODEN: Again, is that
16 administration and benefits?

17 MS. KIMPAN: Administration and benefits
18 both.

19 MR. BURTON: This is just for one
20 location?

21 MR. CARY: No. That's for the whole
22 complex.

23 MR. SHOR: Is this estimate to be
24 published along with the rule with the assumptions for
25 the estimate?

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. CARY: I think we'll be able to --
2 to make that public after the rule -- because it was
3 part of the preparation -- our preparation for the
4 rule.

5 CHAIRWOMAN SPIELER: I think it would be
6 very useful if you could supply that as quickly as you
7 can to the members.

8 MR. CARY: When we get you the rule,
9 we'll get you that.

10 CHAIRWOMAN SPIELER: Thank you. Greg?

11 DR. WAGNER: Two questions. What would
12 be the consequences for any contractor who decided not
13 to go ahead and pay or to follow the -- the directive
14 to not contest a claim?

15 MR. CARY: I don't know what the legal
16 remedies would be, but I don't -- that will become
17 immediately a matter of secretarial interest. I don't
18 see how that could happen.

19 DR. WAGNER: The second more general
20 question is have -- I mean, it's just -- the program is
21 just getting off the ground. You -- have you
22 identified any significant barriers to getting this
23 program up and moving?

24 MR. CARY: Well, with the change of
25 administration, there's, you know, a new team now and

CARPENTER REPORTING, INC.
(303) 752-1200

1 so we would like to have a little more presence in the
2 Secretary's office. There's no question about that in
3 my mind.

4 But I think as the Resource Centers and
5 this process generally have success, they will also
6 generate more interest within the Department of Energy.
7 It's just an interesting position I'm in because in the
8 last administration, we were in the spotlight and now,
9 it's -- it's much less of a priority. That's the sense
10 I have.

11 CHAIRWOMAN SPIELER: Kathryn?

12 DR. MUELLER: I just want to clarify.
13 That 150 million or whatever the number is exactly, is
14 not going to be any kind of a pass-through? The
15 contractors are going to have to take it out of their
16 own pockets?

17 MR. CARY: Yes.

18 DR. MUELLER: No pass-through.

19 And secondly, what about the fact that
20 that changes the number of workers that they have that
21 are -- count as having been injured on the site and how
22 it affects the contractors? What are you doing about
23 that part of it?

24 MR. CARY: I'll defer to my staff on
25 that because that's an insurance claims issue.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MS. KIMPAN: That's right. The
2 contractor insurer cooperation subcommittee has been
3 looking into this, and there are several different
4 possibilities. One is an acquisition letter, a formal
5 document that would -- that would hold formally that
6 these injuries won't cost against contractors in terms
7 of their commitments to fulfill jobs in a certain
8 length of time like here at Rocky and the like.

9 John Burton has also asked that we
10 explore with the National Council on Compensation
11 Insurance, who -- who writes the rates for much of the
12 country -- 38 of the jurisdictions -- whether or not if
13 there's some generalized effect on -- on these rates
14 around the country, if there's anything that NCCI could
15 do in working with us, either as part of implementing
16 the distribution of these resources or just further if
17 NCCI has any thoughts on how this could not effect.

18 I know that Colorado has concerns since
19 you have a commercial insurance policy and you're
20 concerned about rates. Much of the complex is self-
21 insured and doesn't pay insurance premiums, if you
22 will. They pay State retro -- you know, an estimate of
23 what the cost will be and then they fill in the blanks.
24 But for the states where people purchase insurance or
25 the facilities, that's a very large concern and

CARPENTER REPORTING, INC.
(303) 752-1200

1 we're -- and John could perhaps elaborate. I haven't
2 yet contacted NCCI on behalf of us yet.

3 MR. BURTON: I think I heard you say
4 earlier that your hope was to avoid having duplicate
5 sets of files for the two programs.

6 MR. CARY: Only to the extent that it's
7 generating -- we're generating identical work. There
8 are going to have to be two files.

9 MR. BURTON: That's what I was trying to
10 clarify. There are going to have to be two sets of
11 files. Immediately when they come out of the Resource
12 Center, they are going to have to go to two locations.
13 Is there some effort to have standardized forms for the
14 two tracks?

15 MR. CARY: No. This is something --
16 this is something we're working out with the Department
17 of Labor. It's still a work in progress.

18 MS. POST: Thank you for being here,
19 Steve. I just have a couple questions.

20 Your comment about the \$150 million, is
21 that -- No. 1, can you share with us the assumptions
22 that that was based on?

23 MR. CARY: Yeah. That's in the
24 estimate.

25 MS. POST: Okay. So that's primarily --

CARPENTER REPORTING, INC.
(303) 752-1200

1 and tell me if I'm wrong -- when you say that, I'm
2 assuming, then, you're basing that on the regulations
3 or the standards as proposed; correct?

4 MR. CARY: Yes.

5 MS. POST: Secondly -- and this may or
6 may not be something you can answer -- I think you're
7 the second or third representative from DOE for the OWA
8 office we've had and we've only been in existence since
9 January of this year. So I'm understanding the office
10 has had a lot of turmoil, I'm sure. Most of the
11 Federal Government has with the change in
12 administration. When, if you know, do you anticipate
13 having someone who would be able to fill the position
14 of director or whatever the official name is of the
15 Office of Worker Advocacy?

16 MR. CARY: Probably not within -- within
17 eight or nine months. We haven't even -- we're the one
18 office within the Assistant Secretary of DOE that
19 doesn't have a nominee that's left the White House. So
20 with -- with -- with Congress and the business they
21 have this year, without having a nominee that's gone to
22 the Senate, folks are telling me we might not have a
23 confirmed Assistant Secretary until next February. And
24 I think that person is going to be critical in
25 determining the division, not only for this program,

CARPENTER REPORTING, INC.
(303) 752-1200

1 but also selecting the person who is going to do the
2 work.

3 MS. POST: Thank you.

4 CHAIRWOMAN SPIELER: Les?

5 MR. CARY: Until then, you're stuck with
6 me, I think.

7 CHAIRWOMAN SPIELER: Welcome aboard.

8 MR. BODEN: We're pleased to be stuck
9 with you, Steve. One of the things that I heard this
10 morning and I think we heard a little bit yesterday
11 when we went to the resource office across the street
12 led me to wonder the extent to which around the country
13 these offices are following similar procedures.

14 Two cases in point. One, the discussion
15 this morning about applications for physician panel
16 reviews where it sounds like the office here is -- has
17 a policy, basically, of encouraging everybody who's
18 coming in to file a Federal claim also to file for a
19 physician panel review, whereas the numbers that we
20 were presented this morning nationally suggest that
21 that's not the case.

22 And I'm wondering if -- if your office
23 would be able to get back to us with a little clearer
24 information about whether there is a uniform policy,
25 what the policy is, if there is one, and what the

CARPENTER REPORTING, INC.
(303) 752-1200

1 policies are that are being followed by the individual
2 regional offices.

3 It seems to me as an individual on this
4 advisory committee that making people aware of the
5 option of having a physician panel and encouraging them
6 to do so would be an appropriate national policy, but
7 the numbers don't seem to indicate that that policy is
8 being followed.

9 So that was one example. The other was
10 that it appeared to some of the people who visited the
11 resource office here that there may also be different
12 policies being followed for request of DOE personnel
13 and exposure records.

14 And that raises another question about
15 why there would be different policies. And again, if
16 one policy made it more difficult for workers in one
17 region to get access to those records than it was for
18 workers in another region, then that, again, would lead
19 to the kind of disparity of treatment that I think
20 nobody would want to see.

21 So I'm wondering if it might be possible
22 for your office to get back to us about those kinds of
23 questions.

24 MR. CARY: Yes. We've had uniform
25 training for our folks at the Resource Centers and

CARPENTER REPORTING, INC.
(303) 752-1200

1 we've had a protocol to get started. What you're
2 really talking about, clearly, is the next step which
3 we have to do.

4 One concern that I guess we're never
5 going to address -- be able to address is that when
6 someone goes to get their records at Hanford -- at site
7 A and tries to get them and site B, just because there
8 are different levels of recordkeeping, different
9 contractors, different histories, you know, there won't
10 be equal access, even if we give them everything that's
11 there, just because of the historical records.

12 So that's always going to be a concern,
13 but we can try to make it as uniform as we can in the
14 context of what's available.

15 CHAIRWOMAN SPIELER: Steve.

16 DR. MARKOWITZ: Steve, the DOE Notice
17 350.6 directs -- requires contractors to accept as
18 valid claims that come in the Former Worker program.
19 That was approved January 12 of this year. I'm
20 wondering about the status of this. In a way, it
21 actually is -- shows -- takes us one step beyond the
22 physician panels. It's as if, for these claims, the
23 physician panels have ruled. Because that's what the
24 determinations of the former -- programs are accepted.
25 Are contractors now accepting these claims? How many

CARPENTER REPORTING, INC.
(303) 752-1200

1 have been accepted? What are the obstacles now?

2 MR. CARY: I don't have those numbers.

3 What we have done, though, is we've folded that -- that
4 notice into the rule so that's reinforced in the
5 physician panel rule which you'll be seeing shortly.

6 So it's not just standing out there by itself. I think
7 that ends up fortifying and amplifying that notice.

8 But I'll get -- I'll have to get back to you. I don't
9 think it's a large number right now. Would you know,
10 Kate, or not?

11 MS. KIMPAN: Not offhand. It's a small
12 number.

13 CHAIRWOMAN SPIELER: Other committee
14 members? I have a couple of questions I was wondering
15 if you could answer.

16 It came up yesterday that what was going
17 on at the Resource Center here was that people were
18 filling out pretty bare bones the forms for the request
19 for physician panel and sending them in to OWA. And in
20 the comments that were made to us last night, it became
21 pretty clear that nobody was interviewing or discussing
22 occupational histories with the people who were filing
23 these applications. And the radiation exposure piece
24 is not going to be helpful for the toxic exposure
25 questions that are going to come up before the

CARPENTER REPORTING, INC.
(303) 752-1200

1 physician panel.

2 And I asked the director of the local
3 Resource Center who was -- he understood was going to
4 take the occupational histories and he indicated that
5 he was under the impression, having been told by OWA
6 staff, that, somehow, the physician panels were going
7 to do that.

8 And I wondered whether it's been thought
9 through, whether you have figured out who actually is
10 going to find out what people were exposed to and for
11 how long in order to get the occupational -- necessary
12 occupational history information to the physician
13 panels for their review.

14 MR. CARY: That's a good question. Joe,
15 can you answer that?

16 MR. FALCO: Yeah. A number of your
17 questions are kind of leading in the same direction,
18 and that is that you're perceiving that maybe the
19 initial intake of information is not that well
20 developed yet, and I -- I guess, you know, I mean,
21 basically, what has happened, we've been frustrated, as
22 well, because, as you know, we're sort of forced by the
23 legislation to be on a different timetable than Labor
24 in terms of having to still deal with the -- with the
25 physicians' panel rule and that sort of thing.

CARPENTER REPORTING, INC.
(303) 752-1200

1 And we've been working very hard on this
2 and I think this is going to have to be our next -- our
3 first priority is to get -- get it together in terms of
4 the -- in terms of optimizing the intake forms and the
5 information that we're going to get from the
6 applicants.

7 So that -- and in terms of Vikki's
8 questions, for instance, the kind of disparity between
9 the Labor claims and the DOE claims, I mean, the
10 request for review by medical panels form was only
11 recently developed and implemented. So I think, you
12 know, the figures should improve in that we should be
13 capturing more folks.

14 But, in general, yes, we need to work on
15 this and this is a top priority, particularly from my
16 perspective, as to what information the physician
17 panels are going to need. They are going to need a
18 good work history. And we've been in discussions, as I
19 mentioned yesterday, with, for instance, the Former
20 Worker programs to see whether they could be utilized
21 or their forms could be utilized to develop a good
22 history form or a good mechanism to obtain work
23 histories. But that's top priority. Absolutely.

24 MS. KIMPAN: There was also a great deal
25 of misunderstanding by some of the folks talking last

CARPENTER REPORTING, INC.
(303) 752-1200

1 night, and I think that might have been translated to
2 misunderstandings by the committee.

3 The intake centers are intake centers,
4 where the initial intent to claim for either the
5 Federal or State work comp benefit -- the expression of
6 the intent to make those claims is accepted at those
7 intake centers. The intake centers do not develop the
8 claim file beyond accepting the expression of that
9 claimant to proceed into one of the systems.

10 If you file a claim for the Department
11 of Labor, the Department of Labor will then begin a
12 process with human services of querying DOL and DOE on
13 a number of exposure and other personal record
14 attributes.

15 Likewise, if you file the form OWA-1 to
16 come before the physicians' panels, the intake center
17 will never be, in the current model, the place where
18 all of the exposure data -- people say, All I put down
19 was I worked in Building 770 and I think I was exposed.
20 That's all they need to put down to start the claims
21 process.

22 At that point, the Resource Center
23 passes that claim on to the proper system where a claim
24 file will be developed. All of the things -- what Joe
25 just said, the industrial history, the industrial

CARPENTER REPORTING, INC.
(303) 752-1200

1 hygiene history, the personal exposure history, the
2 personal medical records will all be part of either the
3 Office of Worker Advocacy claim file department or part
4 of the Department of Labor claim file handling and
5 development.

6 The Resource Centers, a year from now,
7 will probably say all I took was the person's name,
8 Social, and the disease they believe they have. It is
9 unlikely, in our model or DOL's current model or HHS's
10 model, as I understand it, that those centers will
11 prepare full-blown claims files. They are intake
12 operations to accept an initial intent to claim, and
13 then those claims files will be developed in either
14 agency.

15 CHAIRWOMAN SPIELER: Just so it's
16 understood that the occupational history that comes
17 from DOE employment records may not be sufficient for
18 the physician panels, Joe, it sounds like --

19 MR. FALCO: I mean, obviously, the
20 applicant is a very important source of information.

21 CHAIRWOMAN SPIELER: Right.

22 MR. FALCO: We've got to maximally
23 utilize the --

24 CHAIRWOMAN SPIELER: There have
25 been several --

CARPENTER REPORTING, INC.
(303) 752-1200

1 MS. KIMPAN: Our claims procedures which
2 you guys got electronically sometime back, how the
3 claims office at OWA will work, it is in there clearly
4 that after the claim is begun at headquarters, one of
5 the things that will happen is a history. And I
6 believe our -- our procedures reference the Former
7 Worker algorithms for developing this history will be
8 gathered by that worker. It is not likely to happen in
9 our current model in the Resource Centers.

10 So people's concerns that they weren't
11 asked that at the Resource Center, the Resource Center
12 people's concerns that they weren't gathering that is
13 the way our procedures are laid out -- and you all have
14 that -- is not how that will happen. That will happen
15 as part of the claims operation.

16 CHAIRWOMAN SPIELER: It's just that it
17 may require an individual interview.

18 MS. KIMPAN: Absolutely. I think that's
19 exactly what's anticipated is an individual interview.

20 CHAIRWOMAN SPIELER: Don, go ahead.

21 MR. ELISBURG: I guess I'd like to
22 make -- I'd like to make a couple of observations here
23 that you might be thinking about while you're thinking
24 about this stuff.

25 The first one is the concept that you're

CARPENTER REPORTING, INC.
(303) 752-1200

7 And you know, who is actually going to
8 be able to sit down with the people such as the folks
9 that showed up last night and take the detailed work
10 history either through notes or -- or a table or
11 whatever?

17 And moving files around the country and
18 having different people having to look at it and
19 calling up these poor folks or sending them letters
20 over and over again has a -- when you're dealing with
21 thousands of claims, I think is -- is -- has a
22 potential of putting the folks in some real deep pits
23 here, at least in my experience in handling some major
24 claims programs.

CARPENTER REPORTING, INC.
(303) 752-1200

1 that.

2 My second observation really goes to
3 you, Mr. Secretary. And that is with deference to
4 everybody who's been involved in this process, I think
5 your being assigned as the acting director, in fact, of
6 your office perhaps is an opportunity for someone to
7 take charge of this program at DOE and begin to move
8 towards decisions and execution.

9 We come to these meetings and we hear,
10 essentially, all the good folks talking about how they
11 are thinking about this stuff and studying this stuff
12 and we're hearing the claimants coming to the
13 microphones saying, you know, nothing's happening and
14 it hasn't been happening for a long time.

15 And I know that startups are difficult.
16 Startups are hard. But I think your counterparts in
17 the Labor department have stepped out and moved
18 forward, I think somewhat more dramatically. I think
19 the question of this State program is extraordinarily
20 complicated, but it isn't going to get any less
21 complicated by studying it to death.

22 And I really suggest that anything you
23 could do from your end of things to basically give it a
24 kick-start and -- and move some of these things to
25 where they need to be moved, I think would be very

CARPENTER REPORTING, INC.
(303) 752-1200

1 helpful.

2 CHAIRWOMAN SPIELER: Les? Did you have
3 anything?

4 MR. BODEN: Just a quick question. You
5 talked about using some of the algorithms developed by
6 the Former Worker projects in interviewing people.
7 Presumably, a number of the people who will be in the
8 process of requesting physician panel reviews will have
9 already been seen by the Former Worker projects who
10 will have taken work histories and done exams. Is
11 there a specific plan for using that work that's
12 already been done to create efficiencies in this
13 process to avoid workers having to go back another
14 time, to avoid the cost of doing another duplicative
15 set of exams and history taking?

16 MR. FALCO: Absolutely. And one of the
17 revisions of our forms will be to query initially
18 whether an applicant has gone through a Former Worker
19 program, and then to have the applicant sign a release
20 so we can obtain the information, including the work
21 history from the Former Worker program. So, yeah,
22 absolutely.

23 I also just a comment to -- a response
24 to Don Elisburg's first -- first comment about one-stop
25 shopping. I guess in -- in thinking about the claims

CARPENTER REPORTING, INC.
(303) 752-1200

1 processing procedures, we perceived that -- that the --
2 I mean, in terms of the State claims process, our
3 information needs are far beyond, in general, what is
4 needed for the -- the typical Labor claim where, often,
5 you just need simple information such as proof of
6 employment, et cetera, and proof of diagnosis.

7 So I guess our -- our feeling was that
8 there may not be the -- the amount of personnel or the
9 depth of sophistication of personnel at the Resource
10 Center to obtain all the information that we would need
11 and we felt that, therefore, it would really fall to
12 the Office of Worker Advocacy itself and a case manager
13 who would be knowledgeable about the sites and about --
14 and about the physician panels to take the lead in
15 terms of gathering information.

16 But your point is well taken and maybe
17 we have to revisit this and think whether the Resource
18 Centers could, you know, provide -- provide, you know,
19 obtaining work histories or that sort of thing. We'll
20 have to revisit our procedures, but that was kind of
21 our thinking about it. That really -- because of
22 the -- because of the complication of our information
23 needs, that it would fall to the Office of Worker
24 Advocacy itself.

25 CHAIRWOMAN SPIELER: Glenn?

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. SHOR: I think your comment is
2 really important. Coming from a State administrative
3 point of view, it's -- the information that -- that
4 seems to be going out to the people who are coming to
5 the office now, they seem to have the sense that they
6 filed the State claim. There's some sort of loose
7 language that there's been a State claim filed because
8 they filled out a form that maybe requests a physician
9 panel.

10 And -- and though it is a very complex
11 thing because you're dealing with all the different
12 states and all the different State processes, I think
13 it -- it's critically important that people have a
14 sense of what they have done when they have come to the
15 office and what they haven't done and what the -- what
16 the process is going to be from there on.

17 And with that in mind, I would strongly
18 encourage you to start working more closely with the
19 State agencies and with the information and assistance
20 or ombudsman aspects of the State agencies so that that
21 information can either, in written form or through some
22 follow-up from a State office, be given to the people
23 who come to your offices.

24 Because I think you're really -- people
25 think they have done something that they haven't done

CARPENTER REPORTING, INC.
(303) 752-1200

1 and especially if they are going to be kept calling
2 back, they really don't know where in the process they
3 are.

4 CHAIRWOMAN SPIELER: Greg?

5 DR. WAGNER: Two points. One in
6 follow-up to what Glenn just said. It was quite clear
7 from a number of people speaking last night that really
8 good, clear fact sheets and information should be given
9 out to people who come through the offices would be
10 useful and probably not that difficult to -- to develop
11 at this point.

12 Second, it goes back to the State claims
13 flowchart that you sent us. And I clearly didn't
14 understand that the case manager reviews application
15 and determines eligibility for program was seen as a
16 D.C. office function. And that's where you currently
17 feel that the case managers are going to be rather than
18 in the field? Is that right? Because I, again, would
19 suggest that you consider the value of having not only,
20 you know, centralized case managers, but also field
21 based case managers in order to be able to answer some
22 of the issues that have come up. And also serve in
23 kind of a -- as a resource for the intake personnel
24 there in the Resource Centers.

25 I think that it would be very useful to

CARPENTER REPORTING, INC.
(303) 752-1200

1 have the kind of more sophisticated, knowledgeable case
2 managers, at least a limited number of them in the
3 field.

4 CHAIRWOMAN SPIELER: Jeanne?

5 MS. CISCO: Getting back to the Resource
6 Centers and the history, I guess I thought that you
7 were picking people from the plant who were
8 knowledgeable of the plant, you know, to help those
9 people fill the forms out. And one of the concerns I
10 had last night was, you know, that the guys in -- they
11 really didn't list all of this stuff. When this gets
12 to Washington, I think that at the Resource Center,
13 they would get as much information on that work history
14 and the buildings and everything for you guys to go by,
15 by someone that worked at the plant who knew those
16 areas, and the medical releases that are signed at the
17 Resource Centers, I -- I think there needs to be a way
18 to help these people as they come in and -- and the
19 work -- the case workers working with them.

20 You have the medical release. At the
21 very minimum, I would think the Resource Centers would
22 go ahead and send for that information for the people,
23 for the claim as opposed to the claim getting all the
24 way to Washington and then you guys trying to do it
25 there. It would expedite the process.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. ELISBURG: I have one follow-up
2 question I guess to you, Mr. Secretary, but it may be
3 that somebody over there can answer it. You now have a
4 couple of hundred or so physician panel requests,
5 which, effectively, are State requests to deal with
6 State claims in some fashion. Presumably, you will get
7 more and more each day. Are you, in fact, beginning to
8 develop those as potential State claims now, or are you
9 waiting until your regulations are in place?

10 MR. CARY: We can begin processing
11 those. I just haven't seen any that have been
12 processed yet. It's our plan to have those -- when the
13 rule is ready and the physicians' panels are ready, I
14 mean, they will have -- they will have information
15 going right to them.

16 MR. ELISBURG: So you're not waiting --

17 MR. CARY: No.

18 MR. ELISBURG: -- to develop the claims?

19 MR. CARY: No.

20 MR. ELISBURG: Thank you.

21 CHAIRWOMAN SPIELER: I have a couple of
22 sort of follow-up questions on things that came up.
23 One is, last night, a number of people raised serious
24 concerns about the cost of duplication of medical
25 records. And I -- I was sitting here thinking, as a

CARPENTER REPORTING, INC.
(303) 752-1200

1 former administrator, how that would be 300th on my
2 list of issues, but, very clearly, for some of the
3 people who are coming in, this isn't a secondary issue.
4 It may be a primary one.

5 And I think that some states actually
6 have regulations with regard to how much can be charged
7 for medical records for State compensation claims. And
8 I just would like to make a suggestion that you all
9 look into whether you can utilize State regulations
10 that limit copying costs for medical records in
11 assisting people through the intake centers in getting
12 their medical records together.

13 Because the amount of money that was
14 mentioned last night, 5 to 14 dollars a page for
15 someone who has a serious illness or has serious
16 diagnostic problems and has been to a series of
17 different providers is really very prohibitive for
18 them.

19 And so that's just a suggestion that I
20 know is probably not on your screen, but one that might
21 be useful for you.

22 The other -- the other follow-up is a
23 bigger and more difficult question. And it kind of
24 goes back -- I was sitting here musing about your
25 \$150 -- 150-million-dollar estimate. And it's one of

CARPENTER REPORTING, INC.
(303) 752-1200

1 the discussions that this committee has had repeatedly
2 is the fact that 350.6 reaches only those contractors
3 who have live contracts with DOE and only those claims
4 for which those contractors arguably have legal
5 liability.

6 Now, there are huge numbers of people
7 who -- and this keeps coming up in the course of our
8 discussions -- who may not be within the ambit of 350.6
9 in terms of payment of claims. Either the employer has
10 become privatized in some way so that they are no
11 longer in some kind of contractual privity with the
12 Department of Energy, or -- which I know is true of one
13 site in Ohio. Or, for example, at Rocky Flats, I think
14 that the current contractor does not have liability for
15 pre-1993 claims and that prior holder of that liability
16 is not currently in contractual privity with DOE or
17 after a site is decommissioned, there may be no
18 contractor who's reachable, who's in -- has an ongoing
19 contractual relationship with DOE, and then there are a
20 number of closed sites or atomic weapons employers or a
21 whole variety of other people in which, again, there is
22 no current contractual privity with DOE and no
23 mechanism for reimbursement by DOE.

24 Those workers are in other -- all other
25 respects arguably similarly situated to the workers

CARPENTER REPORTING, INC.
(303) 752-1200

1 covered by 350.6. And it's a very important concern of
2 this committee as to how DOE intends to deal with those
3 claims.

4 So I have kind of two questions. One
5 is: Does this \$150 million include the costs of paying
6 the claims for those workers who were not currently
7 covered by contractual privity relationships? And how
8 does DOE intend to assist those workers in compliance
9 with its obligations under Subtitle D in those
10 situations?

11 MR. CARY: The estimate -- the
12 \$150 million estimate does include those workers.

13 CHAIRWOMAN SPIELER: It does.

14 MR. CARY: But the way we have to deal
15 with that -- and I've talked to the CFO's office about
16 this -- would be a line item in the budget that
17 would -- that would not come from the contractor. It
18 would come from DOE.

19 CHAIRWOMAN SPIELER: And would you then
20 do that by reimbursing the current -- this committee
21 has strongly urged DOE to stand in the place of the
22 employer or responsible party.

23 MR. CARY: That's what would happen in
24 that instance. That's the way I first --

25 CHAIRWOMAN SPIELER: Because we have

CARPENTER REPORTING, INC.
(303) 752-1200

1 managed to come up with untold numbers of barriers to
2 the payment of those claims if DOE fails to do that.
3 And so I'm delighted to hear that. Thank you. Don?

4 MR. ELISBURG: This \$150 million over
5 ten years is all you're going to pay out in worker's
6 comp costs for all these people who are filing claims?

7 MR. CARY: This is the State part of the
8 program. This would be additional claims to what DOE
9 is paying now. Yes. That's our estimate. We'll show
10 you the information and you can look at the estimates.
11 We took them from existing State contractor estimates.

12 MR. BODEN: Somebody likes your
13 estimate.

14 MS. KIMPAN: The prior estimates on the
15 prior bills working through Congress estimated costs
16 for maintenance care for ill workers, costs for medical
17 care. We used prior Federal estimates to the extent we
18 were able. We used some Department of Labor estimates
19 on total claimants, likely comers to the system for
20 things like records searches and the like, so all of
21 the information except our state-specific and/or
22 contractor-specific payments in work comp are based on
23 claims rates, claims numbers, and prior estimates that
24 have largely been vented in parts of this committee
25 have -- and this committee has seen, I'm sure, seen on

CARPENTER REPORTING, INC.
(303) 752-1200

1 the prior beryllium bill and the like at different
2 times. So a number of sources.

3 CHAIRWOMAN SPIELER: Additional
4 questions for Steve? Thank you very much. Is Pete
5 Turcic on the phone? Or were we going to call him?
6 What's the arrangement?

7 MS. KEATING: I think they are on the
8 phone.

9 CHAIRWOMAN SPIELER: Claudia is on the
10 phone now, I think.

11 MS. GANGI: Yes, I'm here.

12 CHAIRWOMAN SPIELER: Does the committee
13 have strong feelings about the order in which we take
14 these? Okay. Why don't we take Claudia's report right
15 now and then Larry's and then we'll go to the
16 Department of Labor.

17 MS. GANGI: Okay. Thank you. Good
18 morning. And I'm sorry that I'm not there in person,
19 but I appreciate --

20 MR. BURTON: Wait a minute. I can't
21 hear. Is there some way to get a -- the volume turned
22 up or something?

23 MS. GANGI: Can you hear me now?

24 CHAIRWOMAN SPIELER: Can you turn up the
25 volume a little, please, for the room. And Claudia,

CARPENTER REPORTING, INC.
(303) 752-1200

1 talk a little bit more slowly because the projection of
2 your voice isn't as clear as it might be if you were
3 here.

4 MS. GANGI: Okay. I want to thank
5 everybody for your willingness to hear from me by phone
6 today. I'm sorry that I'm not there with you.

7 I will be very brief. I just want to
8 report to the committee that the Department of Justice
9 is up and running in respect to the Executive Order.
10 We have three full-time employees here at Justice
11 working on this project.

12 We have to date established a very good
13 working relationship with the Energy Programs Denver
14 district office which is handling the intake of all the
15 RECA claims.

16 To date, we have received from the
17 Denver office 557 requests for verification of approval
18 under Section 5 of RECA for claimants and we have
19 processed, as of this morning, 450 of those requests
20 and we feel comfortable with our turn-around time at
21 this point.

22 We've -- given the volume, we're up to
23 about ten days' response time. But, beyond that,
24 things are running very smoothly on this end. And I
25 don't believe that any RECA claims have actually been

CARPENTER REPORTING, INC.
(303) 752-1200

1 paid yet, but we're getting the front end of the work
2 done in a fairly efficient fashion.

3 And that's all I really have to report.
4 If there are any questions, I'd be happy to answer them
5 for you.

6 CHAIRWOMAN SPIELER: Questions for
7 Claudia?

8 I guess not. Thank you very much.

9 MS. GANGI: Thank you. And Emily, do
10 you want me to stay on the line?

11 CHAIRWOMAN SPIELER: I'm not sure that
12 that's necessary, Claudia. Why don't you -- if there's
13 anything that comes up, we'll try to call you back.

14 MS. GANGI: That's fine.

15 CHAIRWOMAN SPIELER: Will you be in your
16 office?

17 MS. GANGI: I will be in my office.

18 CHAIRWOMAN SPIELER: Wonderful. Thank
19 you very much.

20 MS. GANGI: Thank you. Bye-bye.

21 CHAIRWOMAN SPIELER: Goodbye. Larry?

22 MR. ELLIOTT: Well, thank you. It's a
23 pleasure to be here with you. I purposely came to this
24 meeting to sit in on the subcommittee on physician
25 panels yesterday to answer any questions about -- in

CARPENTER REPORTING, INC.
(303) 752-1200

1 that regard. And I found last evening's public comment
2 period very informative and I'm taking back several
3 notes that I've used as teaching points in our process.
4 Things that we want to try to avoid. Do better on,
5 perhaps.

6 I'll keep my remarks brief. I wanted to
7 bring you up to date on the status of our rules, our
8 advisory committee, the -- I also wanted to share with
9 you some information about physician panel
10 appointments, and I wanted to briefly talk about our
11 dose reconstruction rule and how work history
12 information will be collected on cancer-related --
13 non-SEC cancer-related claims in a dose reconstruction
14 process at HHS.

15 The status of our rules on dose
16 reconstruction and the rule on probability of
17 causation, there are drafts that have been shared with
18 the other departments and with the Office of Management
19 and Budget. We've made revisions to those rules based
20 upon comments and they are now back at the Secretary of
21 Health and Human Services' office and there's further
22 discussion with OMB about forwarding on those rules and
23 publishing them.

24 I cannot give you a date at this point
25 in time as to when we anticipate their publication.

CARPENTER REPORTING, INC.
(303) 752-1200

1 There is a heightened awareness in the Secretary's
2 office that we need to have these in place as well as
3 have the advisory board in place to assist us in
4 reviewing and commenting and providing advice on those
5 rules.

6 It's our hope the rules are going to be
7 available in the very near future. And I can't give
8 you a date, but I will assure the committee members
9 that you will be receiving a copy, once they are
10 published, for your review and comment.

11 The -- the advisory committee status
12 is -- have advanced a list of nominees through the
13 Secretary's office, including the Office of Management
14 and Budget. The White House and the Office of
15 Management and Budget are reviewing those nominations
16 for appointment. We are engaged in discussions about
17 those nominations and are attending to questions that
18 are being raised about advisory board nominations.

19 I can assure you there's also a
20 heightened awareness within the Secretary's office at
21 HHS about the need to have this advisory board seated
22 as soon as possible.

23 The physician panels appointments, I
24 shared with you today four pages. The first two pages
25 that you have are the announcement that we used to

CARPENTER REPORTING, INC.
(303) 752-1200

1 solicit nominations for the physician panel
2 appointments. It was passed out at the start of your
3 meeting. If you're looking like this, it has physician
4 nominations on the front. Four pages stapled together.

5 And I learned yesterday in the
6 subcommittee meeting that this board and subcommittee
7 had not been made aware of what our criteria, our
8 process, our approach, and how we were soliciting
9 nominations for these appointments were being
10 conducted, and so I wanted to share this with you at
11 this time.

12 This was -- it says the -- you've got
13 the program proposal and proposed NIOSH appointment
14 process highlighted through here. This is actually
15 what we try to do in conjunction with our discussions
16 with the Department of Energy. And I would call your
17 attention to perhaps the last two pages, which are
18 perhaps more important for your information to let you
19 know that -- the sources of where we tried to solicit
20 nominations are listed there under B: Association of
21 Occupational and Environmental Clinics, occupational
22 medicine residency directors, American College of
23 Occupational and Environmental Medicine. We did not go
24 to the APHA Occupational Safety and Health section, but
25 we did approach the Society for Occupational and

CARPENTER REPORTING, INC.
(303) 752-1200

1 Environmental Health and NIOSH staff were also
2 canvassed for nominations.

3 A little further down, you'll see the
4 nominations criteria that we were seeking to -- to use.
5 And that's also mentioned in the announcement on the
6 first two pages.

7 And I would call your attention to the
8 selection criteria under C. These were how the names
9 were selected that were sent to the Department of
10 Energy.

11 We actually sent more names than they
12 requested because we were not clear on how many -- we
13 understood they wanted 30 and we wanted to give them
14 a -- a full view of the variety of disciplines and
15 specialties and geographic location of individuals that
16 we considered qualified.

17 So we sent them -- I believe it was 46
18 names, from which 30 will be appointed. We will make
19 those appointments of 30 and then the Department of
20 Energy will assign them to their proposed ten panels.
21 If they need more appointments, they will come back to
22 us and we'll work from the remainder of the list to
23 make that.

24 So I thought you might find this -- and
25 I hope you find it informative and beneficial.

CARPENTER REPORTING, INC.
(303) 752-1200

1 Let me quickly move on to my last point
2 that I wanted to talk about. In our proposed dose
3 reconstruction rule, what I heard last night and what
4 I've heard some this morning is a lot of concern about
5 how work history development will be conducted. And
6 it's been our view and our perspective on dose
7 reconstruction for cancer-related claims that we need
8 to have a very interactive process with the claimant.

9 We are proposing in our draft rule a
10 computer-assisted telephone interview process where we
11 will work with the claimant using a -- a survey
12 instrument to gain the information that -- that will
13 add layers to the work history information like you
14 heard last night that may not be captured in the
15 records that were assembled at a DOE site or provided
16 by an AWE or perhaps even there are no records that
17 exist. Some of this is anecdotal, but very factual,
18 perhaps.

19 So we're having -- I just wanted to
20 mention that that's our intent, to have a very
21 interactive process with the claimant and seek that
22 kind of information and add it to the case file.

23 That will conclude my remarks. I'll be
24 happy to try to answer your questions.

25 CHAIRWOMAN SPIELER: Steve.

CARPENTER REPORTING, INC.
(303) 752-1200

1 DR. MARKOWITZ: In the selection
2 criteria for the physicians, I'm curious about the
3 three criteria: The adequate annual caseload of toxic
4 exposure-related illness; secondly, the maximum
5 5 percent practice in medical-legal consultation;
6 third, the absence of potential conflict of interest.
7 How did you get that information? Did the people --
8 the physicians interested in serving have to -- did you
9 ask them specifically for this or did you try to garner
10 this from the C.V.?

11 MR. ELLIOTT: We used the C.V.'s and the
12 nomination letters that were provided with the C.V. to
13 glean questions that we might want to go back and ask
14 specific candidates. In some cases -- for the first
15 two that you mentioned, there were follow-up calls made
16 to verify how these criteria fit with that person's
17 experience.

18 And as far as the third point that you
19 mentioned, the third criteria on absence of potential
20 conflict, that was gauged specifically by the C.V. and
21 their past affiliations, current affiliations.

22 CHAIRWOMAN SPIELER: Greg?

23 DR. WAGNER: Before final appointments
24 are made, will either you or the DOE ask people to
25 certify their compliance with these criteria?

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. ELLIOTT: I don't believe there's
2 been an intent, I think, to do that.

3 CHAIRWOMAN SPIELER: You might want to
4 ask them for some statement of nonconflict of interest
5 at a minimum.

6 MR. ELLIOTT: I would hope that that
7 will be part of the DOE's responsibility in making
8 assignments. They administer the panel so they will
9 have to file the -- I don't know if these will be
10 special Government employees or how it's set up, the
11 pay structure, but those kinds of factors will be --
12 should be addressed in that process.

13 MR. FALCO: We can do that.

14 MS. HATFIELD: I do have a little bit of
15 a concern when you mention telephone interviews.

16 MR. ELLIOTT: Yes.

17 MS. HATFIELD: One of the gentlemen that
18 spoke last night couldn't hear, so I'm a little
19 concerned about the older workers who are still very
20 private and don't tend to want to give out information
21 on the telephone. And a lot of them don't talk on the
22 phone very much. So I am a little bit -- a little bit
23 concerned about that and what kind of provisions are
24 you making for that.

25 And also, I noticed on your list as I

CARPENTER REPORTING, INC.
(303) 752-1200

1 went through it and this is just kind of a -- we don't
2 seem to have any doctors in Tennessee. We just have
3 one. Was it just that there were no nominations or
4 there was no qualifications or --

5 MR. ELLIOTT: Well, I can't speak -- I
6 don't have the specific list with all their addresses
7 in front of me. I can't tell you how many we had in
8 the Tennessee area. I know we tried to make sure that
9 there was one --

10 MS. HATFIELD: I noticed on the list,
11 there is one. There's one from Nashville.

12 MR. ELLIOTT: I don't have -- I can get
13 that to you, though.

14 And on your -- your first comment, yes,
15 we're very much aware that this is an aging population
16 that we're going to be dealing with. There's a
17 reluctance to talk about some things, given the culture
18 that they come from. We understand and recognize the
19 difficulty in doing telephone interviews. And we were
20 talking and thinking about how to complement that where
21 it doesn't seem to be functioning successfully through
22 either correspondence or perhaps even having someone
23 visit the individual, depending upon where they are.

24 But we need to balance expenditure of
25 resources to do that. So this is a tough issue we're

CARPENTER REPORTING, INC.
(303) 752-1200

1 aware of and we're thinking about. I don't have a
2 solution.

3 MS. HATFIELD: It is a very tough issue.
4 And I guess it goes back to our first thought -- and I
5 know we've talked about this many times -- the one-stop
6 shopping process that we thought we were going to work
7 through because when the worker came in, we wanted them
8 to -- we wanted them to be comfortable and to fill out
9 their paperwork, everything that they were going to
10 need so that we wouldn't have to go back through this
11 again and again and again.

12 So -- I understand your concerns, but
13 you have to understand that when you -- when you look
14 at the workers that -- that -- in all the meetings that
15 we've gone to, all the public meetings that we've been
16 to, there's been a -- a host of -- of older people
17 who -- who can't get around by themselves, who don't
18 have, you know -- we'll talk about letters, a lot of
19 times, letters go in the trash. That's just junk mail.
20 I'm throwing it in the trash. They don't even look at
21 it and don't read it or don't understand it. And a lot
22 of them don't understand. So I think we've really got
23 to take a close look at this.

24 MR. ELLIOTT: Right. We've also talked
25 about, hopefully, there will be somebody that they can

CARPENTER REPORTING, INC.
(303) 752-1200

1 rely on to provide them assistance, maybe sit with them
2 and provide the answers in a telephone interview if we
3 give them the questions in advance. And somebody else
4 can provide the answers. So we talked about that.

5 To make a comment on the one-stop
6 shopping, I think it has a good intent behind it, but
7 it's not going to work for us in dose reconstruction.
8 You can't get all of the information that we're going
9 to ask at the very front end. Okay? It would take us
10 a considerable amount of time to treat -- train the
11 Resource Center case file workers to understand what
12 we're going to need, what we're going to ask for.
13 We're going to have health physicists doing this.

14 I don't see -- I don't know how many
15 Resource Centers has health physicists on staff. And
16 you know, I think for the cancer-related specific claim
17 to do dose reconstruction and to build that work
18 history, it makes sense to -- in our mind to approach
19 it with the process that we have proposed rather than
20 to try to get all of that kind of information at the
21 front end.

22 MS. HATFIELD: I know that we talked
23 about this yesterday in our subcommittee, but, if you
24 don't mind, I'd like to ask you so you can explain it
25 again.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. ELLIOTT: Sure.

2 MS. HATFIELD: From the time you get the
3 application for review to go before the physicians'
4 panel -- from the time you get it, how -- what's -- how
5 long of a process do you estimate it's going to be
6 before the applicant has an answer?

7 MR. ELLIOTT: Well, I -- you're posing
8 that question to the wrong person.

9 MR. CARY: Yeah. We've got to separate
10 this. There's the physician panel and dose
11 reconstruction.

12 MS. HATFIELD: So that's separate. How
13 long is it going to take you to do the dose
14 reconstruction? Sorry. I didn't mean to confuse you.

15 MR. ELLIOTT: I can't speak to how long
16 the panel --

17 MS. HATFIELD: That's okay. I'll
18 address that later.

19 MR. ELLIOTT: -- to act upon that work.
20 Our estimate on dose reconstruction, as best we can
21 provide an estimate at this point in time, is anywhere
22 from a half a day to several weeks, depending upon the
23 individual's work history, employment history, amount
24 of dose they have had reported for them by DOE, how
25 much additional work we need to do to address missed

CARPENTER REPORTING, INC.
(303) 752-1200

1 dose, unmonitored dose. It could take as many as
2 several weeks. Several weeks may translate into eight
3 weeks. Two months. I don't know.

4 MS. HATFIELD: A lot longer. Yeah. To
5 do your dose reconstruction, you're going to have
6 access to their files? Or you're going to have to send
7 off for their files or --

8 MR. ELLIOTT: We will receive a verified
9 cancer-related claim from the Department of Labor. The
10 clock starts ticking on us to do dose reconstruction at
11 that point. We will turn to the Department of Energy
12 and we will seek all of the related dose monitoring
13 information that -- that that individual may have had
14 collected on them during their work history. And we'll
15 also seek from the Department of Energy a very -- they
16 have worked up a very comprehensive list of additional
17 information and material and records that would
18 complement the dose reconstruction process that won't
19 be existent in the dose -- individual's dose file.

20 MS. HATFIELD: Okay.

21 MR. ELLIOTT: So we're relying on the
22 Department of Energy to provide that to us.

23 MS. HATFIELD: Okay. Then let me ask
24 Steven, is the Department of Energy prepared for the
25 onset of the records? I mean, have they -- have they

CARPENTER REPORTING, INC.
(303) 752-1200

1 made adjustments in their hiring so that they can be
2 taken care of in a timely fashion?

3 MR. CARY: Yes. For the individual
4 exposure -- the individual exposure records, they are
5 an important part of this process, and the way is
6 cleared for that.

7 MS. HATFIELD: So the Department of
8 Energy has hired extra people to do this?

9 MR. CARY: No. What we've done is our
10 records folks have linked up with the records people at
11 the different sites. And they know this is coming and
12 it's a -- you know, it's a charge we're essentially
13 paying for, for the individuals.

14 MS. HATFIELD: Okay. Thank you.

15 CHAIRWOMAN SPIELER: Glenn?

16 MR. SHOR: In your planning process for
17 doing the dose reconstruction, how many individual
18 cases do you anticipate you'll be doing?

19 MR. ELLIOTT: That's another very good
20 question. A hard question to give an answer to. I
21 am -- we've been working with different sets of
22 estimates that we've seen in Labor's regulation,
23 estimates that -- of how many claims have been received
24 to date and asking for statistics on the 6,000 claims
25 we heard about last Thursday, as to how many non-SEC

CARPENTER REPORTING, INC.
(303) 752-1200

1 cancers are in that 6,000. We estimate that based
2 upon -- these are ranges that we're using to build this
3 estimate from. But, in our first year, we're
4 anticipating around 6,000 dose reconstructions.

5 CHAIRWOMAN SPIELER: Steve?

6 DR. MARKOWITZ: So that each of those
7 individuals will have an interview about their work
8 history and that interview will be conducted by a
9 health physicist?

10 MR. ELLIOTT: There will be trained
11 interviewers. I can't guarantee that each interviewer
12 will be a health physicist, but they will have some
13 health physics training to understand the background
14 behind the question and what follow-up questions,
15 depending upon the answer, should be posed.

16 DR. MARKOWITZ: So that will be uniform
17 across the complex?

18 MR. ELLIOTT: Uniform across the claims.

19 DR. MARKOWITZ: Excluding the special
20 exposure claims. And with using a structured
21 interview?

22 MR. ELLIOTT: Yes.

23 DR. MARKOWITZ: There's even less
24 information -- switching now to the physician panel
25 questions, there's even less information about chemical

CARPENTER REPORTING, INC.
(303) 752-1200

1 exposures, toxic exposures, and it would behoove the
2 DOE to examine what NIOSH is doing and consider the
3 same kind of process in that exposure history by people
4 who are used to doing such things, trained uniformly
5 across the process -- complex.

6 CHAIRWOMAN SPIELER: Jeanne?

7 MS. CISCO: You mentioned that you were
8 going to look at the rate exposure histories, where
9 people were sending for the exposure histories and
10 getting them back, and looking at those. I was just
11 wondering how much weight you put on what we're getting
12 back from DOE on exposure histories because I feel a
13 lot of those are very incorrect. You know, for
14 instance, at our powerplant, they zeroed our badges,
15 but we're getting exposure histories back. What do you
16 do -- are you just going to look at that, or are you
17 going to --

18 MR. ELLIOTT: No. We will -- that's our
19 starting point. We'll use that. And if it's clear
20 that an -- we'll go through the interview process. At
21 that point, if it's clear that there is enough dose
22 recorded that would merit a recommended decision to
23 award, we will go in and send the dose reconstruction
24 report on to DOL and to the claimant.

25 If there's not enough dose in the

CARPENTER REPORTING, INC.
(303) 752-1200

1 individual dose record as recorded that would merit a
2 recommended decision to award, we will pursue other
3 record systems and information to augment that dose
4 report.

5 These other informations that we're
6 talking about are air monitoring data that might have
7 been conducted in the plant, traditional history of
8 changes in dosimetry practices that led to missed dose,
9 unaccounted for dose.

10 Through our research at NIOSH, we've
11 become very familiar with a small group of these sites
12 and how that missed dose has occurred. For example,
13 here at Rocky Flats, I know that there is an effort
14 underway to do some dose reconstruction, to add the
15 neutron badges that were, by and large, never counted
16 and incorporated into the individual dose record for a
17 person. So we're very much interested in that and will
18 include that.

19 There are other dose reconstructions
20 that have occurred around the complex. The Mound site
21 has had all their polonium dose now reconstructed and
22 it's added to the individual's dose files. We've been
23 using that information.

24 There's been a dose reconstruction at
25 Hanford. These are site-wide dose reconstructions.

CARPENTER REPORTING, INC.
(303) 752-1200

1 And in your site in Portsmouth, Ohio, NIOSH is about to
2 release a study of that which has an exposure
3 assessment and a dose reconstruction which adds a
4 considerable amount of dose that was never accounted
5 for.

6 So we're not accepting just on face
7 value the dose record for an individual unless it makes
8 sense to -- to do so and send it on, because no matter
9 what we add, they are still going to get an award. We
10 don't want to delay their receipt of an award.

11 MR. BLEA: The other thing that we
12 talked about, just to share with the rest of the
13 committee, there was a question about the -- the
14 appointment of the panel members for three years.
15 There was a question mark. I wonder if the panel
16 discussed this because I'd like to see it staggered so
17 we always have a physician on -- on the team --

18 CHAIRWOMAN SPIELER: Maybe, Rick, it
19 would make sense to hold that until we discuss the
20 subcommittee's report.

21 MR. BLEA: Okay. Fine.

22 CHAIRWOMAN SPIELER: Are there
23 additional questions for Larry? We really appreciate
24 your coming out.

25 MR. ELLIOTT: I learned a lot.

CARPENTER REPORTING, INC.
(303) 752-1200

1 CHAIRWOMAN SPIELER: Let me suggest, why
2 don't we take a ten-minute break now and then as soon
3 as we reconvene, call Pete Turcic and follow up with
4 the DOL report and move on with the rest of the agenda.
5 Is that acceptable? Good. Ten-minute break.

6 (There was a recess taken from 9:49 a.m.
7 to 10:12 a.m.)

8 CHAIRWOMAN SPIELER: Let's get started,
9 please. Just for logistical issues, there's a
10 shuttle -- Super Shuttle leaving from the hotel at 5 to
11 3 for the airport. And I think there are quite a few
12 people who have planes that leave between 4:30 and 5
13 who might want to take it at \$17 a person, going
14 directly to the airport. It can seat 10.

15 It's my intention to personally be on
16 that shuttle and so that -- that sort of sets the
17 parameters for this meeting. Because of my travel
18 schedule later this week, I really can't miss getting
19 back to the East Coast today, and that's the last
20 opportunity I have to do it.

21 MR. BODEN: Could we take another
22 kind -- just to make sure there aren't 11 or 12 of us?

23 CHAIRWOMAN SPIELER: Okay. How many
24 people think that they want to be on that shuttle? We
25 could continue the meeting. We'll have a quorum, I'm

CARPENTER REPORTING, INC.
(303) 752-1200

1 sure. It's less than 10.

2 DR. MARKOWITZ: Is there anybody who
3 needs to leave closer to 2:30?

4 MR. ELISBURG: Actually, I was
5 considering that possibility because --

6 CHAIRWOMAN SPIELER: It sounds like we
7 may need to get this meeting through by 2:30, in which
8 case we may need to just take a very short break for
9 lunch for people to check out if they haven't already
10 done it and grab sandwiches and come in.

11 MR. BURTON: Is there a luncheon set up
12 for just us?

13 CHAIRWOMAN SPIELER: I believe so.

14 MR. CARY: Is there a lunch set up?
15 Lunch set up for just this group?

16 CHAIRWOMAN SPIELER: No. Judy, the
17 question is -- can I please ask you a question? It
18 needs to be a buffet of some kind because we need to be
19 able to come back in and continue working. We can't
20 take a full hour for lunch. So I'm assuming it's some
21 kind of buffet and we'll be able to bring food back in.

22 We don't have Pete Turcic on the phone
23 yet and haven't yet tracked him down, so -- and I
24 actually think because of the time constraints of this
25 meeting, it might make sense for us to move directly

CARPENTER REPORTING, INC.
(303) 752-1200

1 anyway into the subcommittee discussions.

2 I also circulated to you a draft of a
3 letter that I would like to see some version of sent by
4 this committee to the Secretary. And I'm hoping to
5 complete that letter this week and mail it in and,
6 therefore, I would like to allocate time at the end of
7 this meeting -- probably 45 minutes to an hour -- to a
8 discussion of the letter and finalizing it.

9 There are a couple of issues in it that
10 I think there's sufficient disagreement about to merit
11 some serious committee discussion, which means that I
12 would ask that the subcommittees focus in on issues
13 that are of paramount importance for this committee to
14 discuss and take action on at this meeting, if that's
15 at all possible. Okay?

16 And I'd like to do the subcommittee
17 discussions, I think, physician panel discussion first,
18 claims processing second, State relations third,
19 contractor insurer relations fourth, and the
20 performance evaluation last. Is that acceptable?

21 DR. MARKOWITZ: I sort of wanted Steve
22 Cary to hear --

23 CHAIRWOMAN SPIELER: Unfortunately, he's
24 left.

25 DR. MARKOWITZ: He's gone. For the day?

CARPENTER REPORTING, INC.
(303) 752-1200

1 CHAIRWOMAN SPIELER: Yes. I think it's
2 important, by the way, that -- and partly, this was a
3 concern raised to me with regard to the minutes from
4 the last meeting -- that we formalize any acceptance of
5 committee recommendations by formal motion so that it's
6 clear in the minutes and can -- and in order to do
7 that, if the committees have specific recommendations
8 they want communicated to the OWA and the department,
9 I'd like to make sure that we do that before we move on
10 to the next subcommittee report.

11 Sorry, Steve. I didn't realize that
12 Steve Cary was leaving, either.

13 DR. MARKOWITZ: The report from the
14 physician panel subcommittee, other subcommittee
15 members should feel free to add, correct, or interrupt
16 me.

17 We discussed the draft version of the
18 physician panel proposed rules that we had seen -- I
19 think the last draft that I saw was the end of June.
20 We were told that, in fact, it's changed considerably
21 since then. But we -- our comments really revolved
22 around what it looked like a couple of months ago.

23 The critical issue, though, that we
24 considered, really, was this direction that physician
25 panels should follow -- should use applicable criteria

CARPENTER REPORTING, INC.
(303) 752-1200

1 under State law, in making a determination about
2 causality. And we thought that that was entirely wrong
3 and really was -- represented a gross misunderstanding
4 of how worker's compensation works and how -- and what
5 physicians do.

6 We don't determine what's compensable.
7 We don't determine what's caused by what. Physicians
8 determine causality. They don't determine
9 compensability. A physician panel rule should
10 understand that. It should reflect that.

11 This committee previously made the
12 recommendation that a national uniform standard be used
13 by physician panels in examining claims for diseases
14 related to toxic exposures. It's the only way that
15 makes any sense at all. It makes sense medically,
16 scientifically and makes sense in terms of justice and
17 equity that a single standard be used across the
18 complex, and that standard be -- in fact, it's been
19 formulated by DOE to us that, more likely than not,
20 that toxic exposures incurred at DOE contributed to,
21 caused, accelerated, in some sense exacerbated the
22 health condition related to those toxic exposures.

23 It's absolutely untenable that DOE would
24 run a dozen -- ten or a dozen physician panels without
25 having this. It would be an administrative nightmare.

CARPENTER REPORTING, INC.
(303) 752-1200

1 It would be literally impossible to educate panels of
2 three physicians who will cover three or four or five
3 states each the way the assignments are going about
4 State law, which, in itself, is vague and often subject
5 to interpretation in the process of deciding worker's
6 comp claims.

7 So this -- this is a deadly error that
8 is being committed if it still survives in the draft
9 form. Our understanding is that the DOE came up with
10 this in response to concerns about Federalism and about
11 the need to -- make states happy about using their
12 own -- using their own -- not granting state law.

13 That relates to legal matters that I
14 certainly don't have any expertise in, but it seems to
15 me, though, that if DOE asserts a standard that meets
16 the minimum legal standards by each state but exceeds
17 that, that wouldn't be preempting State's rights or
18 State law. Clearly --

19 MR. BURTON: Try it again.

20 DR. MARKOWITZ: If DOE asserts a
21 standard here that meets the minimum State standards
22 but goes beyond that, that that wouldn't preempt State
23 law or that wouldn't contravene State law.

24 If DOE asserted a national standard
25 that were, for some states, below the State threshold

CARPENTER REPORTING, INC.
(303) 752-1200

1 for causality or compensability, then DOE couldn't do
2 that. But to go above and beyond what the minimal
3 State requirements are for compensation, it would seem
4 to me, an employer, such as DOE has been, would be
5 entitled to do that.

6 Was there anything else on that point
7 that was raised?

8 MR. FALCO: Steve, I just wanted to
9 maybe clarify our discussion of what I said yesterday
10 and I think, as I say, the kind of transition in the --
11 in the drafts between the uniform standard versus, you
12 know, complying with State standards had to do with the
13 general counsel's interpretation of Subtitle D and how
14 it related to Order 350.6. The 350.6, which says
15 that -- that the -- that the DOE will instruct
16 contractors not to dispute valid -- valid claims. And
17 in 350.6 making reference to Subtitle D, whereby
18 Subtitle D would say that, basically, the purpose of
19 the panels is to determine what is a valid claim and
20 all this was -- and to assist contractor employees with
21 applications to State worker's compensation. In
22 particular, valid claims.

23 So it kind of -- the legal
24 interpretation sort of had to do with that. But I
25 would also say that we find in -- in interacting with

CARPENTER REPORTING, INC.
(303) 752-1200

1 our general counsel that their reading of the law
2 and -- and concepts kind of evolve. And I think you
3 may find that in the final published -- in the
4 published proposed rule making, that this is further
5 evolved and there's a lot of discussion about this in
6 the preamble, as well.

7 CHAIRWOMAN SPIELER: I'm actually going
8 to ask the subcommittees chairs to chair the components
9 of the meeting in which they are making their
10 presentation. Greg.

11 DR. WAGNER: I think to summarize what
12 you said, our subcommittee made a specific
13 recommendation that the -- that the physician panel
14 rules should reflect the physician role of determining
15 causality and should not be directed towards having the
16 physician panels express opinions concerning
17 compensability. And I would suggest that we put that
18 forward to the group as a recommendation from our
19 subcommittee.

20 CHAIRWOMAN SPIELER: Questions?

21 DR. MUELLER: I just wanted to amend
22 that. So that would be the beginning of the motion and
23 then that we would also say that all physician panels
24 should answer the question as you had stated it,
25 whether it's medically probable or, et cetera, that

CARPENTER REPORTING, INC.
(303) 752-1200

1 should be stated -- that should be part of the motion.

2 So they are both answered.

3 MR. BODEN: Steve? There was just
4 something you said before that I wanted to clarify
5 about -- I think you -- you made a statement about the
6 relationship between the physician panels and State
7 laws that had to do with the physician panels choosing
8 a standard that was, as I understood it, as stringent
9 as the most stringent State standard, which I don't --
10 if that's what you were thinking, it sounds to me like
11 not a good idea and gets you back into the
12 compensability area.

13 I think -- I'd like to just clarify
14 because I think that the proposal that Greg made with
15 the amendment that Kathryn made really took the
16 physician panel compensability -- decisions outside the
17 realm of how the State laws might interpret their
18 decisions in the compensability context. Is that --

19 DR. MARKOWITZ: I didn't understand the
20 last part of that.

21 MR. BODEN: I think you shouldn't refer
22 to State law at all when you're talking about the
23 physician panels. I think you should simply say that
24 the physician panels are trying to make a medical
25 decision about causality and that other issues that

CARPENTER REPORTING, INC.
(303) 752-1200

1 might come up in State law such as, you know, a limited
2 number of compensable conditions or aggravation or last
3 injurious exposure, et cetera, would -- I mean, this
4 is -- would not be a part of what the physician panel
5 would do.

6 DR. WAGNER: Yeah. It would be outside
7 the purview. It would be beyond the consideration of
8 the panels.

9 MR. BURTON: I support the motion as I
10 understand it, which is to have a uniform standard
11 that, from a medical standpoint, tries to determine
12 causation, more probably than not and so on. I want to
13 separate that from endorsing your commentary about what
14 constitutes preemption because I think you're probably
15 dead wrong on that. And I don't think that's -- that's
16 a separate issue, I think, that really is a tricky one
17 because if I understand what I thought the spirit of
18 the DOE thing was, it was to say we're not going to
19 preempt State laws in the technical sense, but we are
20 going to make determinations by these panels which
21 we're going to then encourage employers to accept and
22 pay on the basis of, even though they are inconsistent
23 with State law.

24 I don't -- it's good that there's a
25 tricky question that needs -- and I think is beyond our

CARPENTER REPORTING, INC.
(303) 752-1200

1 scope is what happens if a carrier refuses to do that
2 or if -- what happens if a State refuses to cooperate?
3 I don't think that ought to be a part of -- of what
4 you're recommending and that really gets into some
5 tricky legal preemption issues that I don't know what
6 the answer is myself.

7 But I want to clearly disassociate
8 myself from taking a stand on your views of preemption
9 as opposed to everything else you said.

10 CHAIRWOMAN SPIELER: I think Les was
11 trying to say the same thing.

12 MR. BODEN: I think, John, you said it
13 better.

14 DR. WAGNER: As long as we have a
15 physician -- this is exactly the issue that we're
16 trying to address that the physicians panel should be
17 dealing with the medical and scientific issues about
18 causality and that's it. You shouldn't be delving into
19 these other areas.

20 DR. MARKOWITZ: Thereby proving why
21 physicians should pay attention to only medical issues.

22 MR. BURTON: You made your case.

23 MS. POST: Can I just make a comment? I
24 agree with -- as a representative of a State agency, I
25 totally agree with what John has said and also, Les has

CARPENTER REPORTING, INC.
(303) 752-1200

1 said. And so long as the physician panels stick to
2 their knowledge, which is medical causation, great.

3 I don't think that -- and I know there's
4 a little overlap between medical and legal causation,
5 but once you step your foot into the legal, I think
6 it's a whole new ballgame.

7 DR. MARKOWITZ: Emily, you want us to
8 then now formulate the recommendation?

9 CHAIRWOMAN SPIELER: I think it would be
10 helpful for the purpose of the minutes and for any
11 historical review of our -- the position of this
12 committee if you could reformulate the motion right now
13 and if we could move and second it and call it to a
14 vote.

15 DR. MARKOWITZ: Greg, you want to --

16 DR. WAGNER: Sure. That the physician
17 panel rules should reflect the physician role of
18 determining causality rather than having physician
19 panels express opinions concerning compensability.

20 DR. MUELLER: Are you going to add
21 another sentence? So -- and therefore, all physician
22 panels will determine whether there is -- I don't know
23 exactly what you stated -- there's a medical probable
24 causal relationship.

25 DR. MARKOWITZ: Use a single uniform

CARPENTER REPORTING, INC.
(303) 752-1200

1 standard of causation that consists of more likely than
2 not that the health condition was caused, contributed,
3 exacerbated, or accelerated by the toxic exposure
4 incurred under DOE employment.

5 MR. BURTON: I think the only thing I
6 would suggest adding, and I think it's clear, is to
7 make sure medical is always the modifier of the
8 causation. Because if a lawyer reads causation, even
9 though you mean it just in the medical thing, they are
10 going to think legal causation. That's clearly not
11 what we're saying.

12 CHAIRWOMAN SPIELER: All right. I think
13 we need it restated one more time by a single person.

14 MR. BODEN: Is it possible that the --
15 that you could read -- I don't know how this works
16 exactly, but can you read something back to us and we
17 can modify it?

18 THE COURT REPORTER: I can try. "That
19 the physician panel rules should reflect the physician
20 role of determining causality rather than having
21 physician panels express opinions concerning
22 compensability, and, therefore, all physician panels
23 will use a single uniform standard of causation that
24 consists of more likely than not that the health
25 condition was caused, contributed, exacerbated, or

CARPENTER REPORTING, INC.
(303) 752-1200

1 accelerated by the toxic exposures incurred under DOE
2 employment."

3 CHAIRWOMAN SPIELER: In the very first
4 phrase, it should say medical causation or causality
5 rather than just causality and it's the physician role
6 that we're talking about.

7 DR. WAGNER: Physician role. It's a
8 recommendation from the subcommittee to the group and I
9 would suggest that the group -- I would move that the
10 committee accept the recommendation from the
11 subcommittee.

12 MR. BURTON: So moved. It doesn't need
13 a second if it's a subcommittee recommendation.

14 CHAIRWOMAN SPIELER: Okay. Any further
15 discussion on the motion? All those in favor, say aye.
16 Anyone opposed?

17 Okay. The motion passes unanimously.

18 Are there further issues to be brought
19 by the --

20 DR. MARKOWITZ: Just a --

21 CHAIRWOMAN SPIELER: -- medical panel
22 subcommittee?

23 DR. MARKOWITZ: In the draft physician
24 panel rules, there are -- towards the end, there were a
25 set of criteria proposed whereby the Office of Worker

CARPENTER REPORTING, INC.
(303) 752-1200

1 Advocacy could re-review physician panel
2 determinations. So we're dealing with what
3 circumstances Office of Worker Advocacy could submit a
4 physician panel determination decision either to
5 another panel or to submit it back to the same panel
6 for re-review.

7 And we found the criteria to be very
8 vague and it essentially allowed the Office of Worker
9 Advocacy to re-review decisions as often as it liked by
10 as many panels as it liked.

11 We thought there should be very specific
12 criteria, occasions when the office could review --
13 re-review determinations of the panel. Those should be
14 that when no consensus in the physician panel exists,
15 that there had to be unity.

16 Secondly, when there's new information
17 that's arisen about the claim that could impact
18 decision.

19 And third, when there was demonstrated
20 to be conflict of interest by one of the physicians who
21 had sat on the panel who had made that determination.

22 And above and beyond that, we didn't
23 really see when the Office of Worker Advocacy should
24 have latitude to re-review decisions by physician
25 panels.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. OLSEN: Steve, when -- under what
2 circumstances would you contemplate new information?

3 DR. MARKOWITZ: When there's new
4 exposure information that comes out in particular. If
5 there's new medical information, although that would
6 be --

7 MR. OLSEN: You mean like a medical
8 breakthrough?

9 DR. MARKOWITZ: No. No. About the
10 nature of the condition that the person has, although I
11 wouldn't expect that to occur much. The exposure
12 information, though, evolves all the time. So that, I
13 think, would be more likely to be the --

14 DR. WAGNER: For example, Larry Elliott
15 was saying there's about to be a new publication
16 concerning radiation exposure at Portsmouth. That, in
17 the event of radiation-related illnesses, should be
18 taken into consideration. I could see a -- there's
19 growing evidence of the role of silica exposure in
20 creating chronic kidney disease and to the extent that
21 that information makes it into the peer-reviewed
22 medical literature, becomes common knowledge, then that
23 might be something that the DOE would take into
24 consideration as new information related to old
25 previously failed claims for supporting a claim for

CARPENTER REPORTING, INC.
(303) 752-1200

1 chronic kidney disease.

2 DR. MARKOWITZ: Also, information that
3 would come out in the Former Worker programs over time
4 which may relate certain conditions to exposures in
5 subsets of workers in plants and that information
6 should be relevant to this.

7 MR. BURTON: I think this is a tricky
8 enough one because it seems to me you've got to be
9 careful this doesn't open up reconsiderations that go
10 the other direction. Because I could imagine medical
11 science evolving in a way that says, we used to think
12 certain exposures cause X. Now we have better evidence
13 it doesn't. I don't know that we -- I'm almost
14 encouraged to say this is one for the subcommittee to
15 go back and redraft and come back to us on this one
16 because I do this is a complicated enough one, I hate
17 to see us do this one on the spur of the moment.

18 Also, I think there ought to be some
19 time limits here. There's some, obviously, from an
20 employee standpoint, they have wanted to reopen for a
21 long time, someone, I think -- some limitation about --
22 that they seem to be closed out, don't just keep
23 hanging around.

24 DR. WAGNER: My guess is that since this
25 was addressed in the first draft rules that we saw,

CARPENTER REPORTING, INC.
(303) 752-1200

1 that DOE will be addressing it in their draft rules,
2 will have an opportunity to review and comment on them
3 both individually and then to probably consider whether
4 there's a subcommittee recommendation that comes
5 through. So I'd defer consideration of this specific
6 recommendation.

7 MR. BODEN: Can I just ask a question?
8 I don't remember it that well. I'm a little confused.
9 When you're talking about a review of the physician
10 panel reports, my -- my assumption is that this is a
11 review that occurs before the decision about paying a
12 claim and it's not -- you're not talking about
13 something that happens years after the claim is paid
14 that new medical evidence arrives?

15 DR. MARKOWITZ: That's not -- it's an
16 issue of time limits is relevant. That's not addressed
17 in the proposed rule at all. There are no time limits.
18 It doesn't state whether, once the claim is paid, that
19 the consideration for re-review are different.

20 MR. BODEN: So -- but that might be
21 another area of -- to address; that is, whether to
22 clarify whether this reconsideration is simply a
23 consideration of the physician panel report prior to
24 making a decision about paying a claim or whether it's
25 referring to something that's more long-term because I

CARPENTER REPORTING, INC.
(303) 752-1200

1 think there are two quite different circumstances.

2 DR. MARKOWITZ: Any other comments? The
3 third issue we raised was quality assurance. There is
4 almost nothing about quality assurance on the physician
5 panel operation in the proposed rules. We would like
6 to see a plan developed that needn't and probably
7 shouldn't be specified in the rules; nonetheless, the
8 office needs to do that and we don't have it.
9 Apparently, there isn't anything drafted. And so we
10 would request to be involved in that process and that
11 that process should proceed, should develop a plan for
12 quality assurance, but they should permit something.
13 We should get a chance to provide input.

14 DR. MUELLER: And that plan should
15 include a way to deselect physicians off the panel if
16 necessary.

17 DR. MARKOWITZ: That's right.

18 CHAIRWOMAN SPIELER: I think you need to
19 talk up, so that it can be recorded in the --

20 DR. MUELLER: To remove physicians from
21 the panel.

22 MR. BURTON: Remove physicians from the
23 panel. Again, I don't know. Is this something that we
24 want to wait and see what the draft regulations look
25 like and comment? Or is this --

CARPENTER REPORTING, INC.
(303) 752-1200

1 DR. WAGNER: This is probably
2 operational. And we don't anticipate that it's in the
3 draft rules and so it is a matter of getting it on
4 their operational plate.

5 MR. BURTON: Okay.

6 CHAIRWOMAN SPIELER: Do you feel that it
7 would be useful to have a formal recommendation from
8 this committee on this issue?

9 DR. WAGNER: Yes.

10 DR. MARKOWITZ: Sure. The
11 recommendation is that the quality assurance plan be
12 developed as soon as possible and that we would very
13 much like to see drafts of that as soon as possible.

14 CHAIRWOMAN SPIELER: And that there be a
15 mechanism for deselection? Or no?

16 DR. MARKOWITZ: That's one of a number
17 of issues they need to deal with.

18 CHAIRWOMAN SPIELER: Okay. So the
19 motion, as I understand it, coming from the
20 subcommittee is that there be a mechanism for quality
21 assurance and review of the performance of the medical
22 panels developed by DOE and that the members,
23 particularly of the subcommittee on physician panels of
24 this committee, be invited to be involved in the
25 development of that quality assurance process.

CARPENTER REPORTING, INC.
(303) 752-1200

1 That comes as a motion made and seconded
2 by the subcommittee. Is there any discussion on that?

3 MR. OLSEN: Who would develop the QA
4 plan?

5 DR. MARKOWITZ: Who would? The Office
6 of Worker Advocacy.

7 MR. BODEN: Actually, that's a good
8 amendment on the rule, that you never -- that you make
9 sentences active instead of passive. Then the
10 recommendation should be that the Office of Worker
11 Advocacy develop a quality assurance plan for medical
12 panels.

13 MR. OLSEN: Yeah.

14 CHAIRWOMAN SPIELER: I assume that would
15 be a friendly amendment.

16 DR. MARKOWITZ: Yes.

17 MR. BODEN: Very friendly.

18 CHAIRWOMAN SPIELER: Any further
19 discussion? All those in favor? Opposed?

20 Carries unanimously. Is there anything
21 else from --

22 DR. MARKOWITZ: A small related issue
23 that Ricky raised was this idea that if physicians have
24 three-year terms on these panels, that the Office
25 should stagger them so that there is continuity:

CARPENTER REPORTING, INC.
(303) 752-1200

1 One-third of physicians being appointed any given year
2 or that the term be one year, two years, or three --
3 three years, but, at the beginning, find a way of
4 rotating -- rotating it so that all of the physicians
5 aren't reappointed in any given year. It may not be
6 achievable the first two years because you don't really
7 want any physician serving just one year, but,
8 thereafter, it should be doable.

9 MR. SHOR: Do people stay in the
10 office -- in the role until there is a replacement for
11 them? Because if there isn't and the terms end, they
12 are going to have a depletion of the numbers of people
13 before the reappointments are made.

14 MR. BLEA: I agree that they should stay
15 in place until a replacement. There's no doubt about
16 that.

17 DR. MARKOWITZ: Greg.

18 DR. WAGNER: I also think that there is
19 going to be some natural turnover, but the concern of
20 the committee was in not having a, you know, single
21 point of departure, single point of entry. And
22 staggering the terms of initial appointment seemed to
23 be one step towards that.

24 Again, this is probably an operational
25 issue, since, you know, there are no rules about the

CARPENTER REPORTING, INC.
(303) 752-1200

1 length of service of the physicians' panel at this
2 time, so a recommendation to the Office of Worker
3 Advocacy on how to set this up with that goal in mind.

4 DR. MARKOWITZ: Anything else? One
5 final concern that had to do with --

6 DR. WAGNER: Do you want to make that a
7 formal recommendation?

8 DR. MARKOWITZ: Shall we?

9 CHAIRWOMAN SPIELER: I don't think it's
10 necessary. We don't -- although it's -- the committee
11 doesn't believe it's necessary to make this in a formal
12 motion, we'd like to urge the Office of Worker Advocacy
13 to devise a plan that would prevent a sort of wholesale
14 turnover on physician panels -- simultaneous wholesale
15 turnover on physician panels at the end of terms.

16 DR. MARKOWITZ: The final concern had to
17 do with the triage function of the Office of Worker
18 Advocacy, for once a claimant submits a request for
19 physician review, circumstances under which that office
20 would not send that file to a panel for review. And in
21 the draft physician rules, it says that when the
22 applicant submits reasonable evidence of illness or
23 death of covered employee is related to employment. We
24 found that to be excessively vague and would like to
25 know from the office what -- what that means and what

CARPENTER REPORTING, INC.
(303) 752-1200

1 their specific plans are when the initial review is
2 done by the Office of Worker Advocacy, the
3 circumstances under which it would not send along a
4 file to the physician panel for review.

5 MS. KIMPAN: We could respond to the old
6 draft, Steven, but it probably --

7 DR. MARKOWITZ: Don't bother. Just tell
8 us what the current thinking is.

9 MS. KIMPAN: Okay. To the extent we
10 can.

11 MR. FALCO: Yeah. I mean, I mean, the
12 current thinking -- and this is very general, as I say.
13 It'll -- the new -- we'll have to reflect on the new,
14 you know, proposed rule when it's published -- was just
15 some very basic criteria in terms of yes, the person
16 actually did work for a DOE contractor. Yes, they have
17 an illness, and -- and it was not an injury, that sort
18 of thing. And they had -- and they had brought some
19 evidence and their application contained some evidence
20 supporting these factors.

21 So the idea was a very kind of liberal
22 or minimal kind of criteria, but -- you know, rather
23 than, you know, any kind of opinion about causation.
24 And, you know, we felt that was the panel's role and
25 not that there was going to be, you know, a high fence

CARPENTER REPORTING, INC.
(303) 752-1200

1 to jump over before referral to a panel.

2 DR. MARKOWITZ: Would it be a physician
3 who would be reviewing that and making that decision?

4 MR. FALCO: I mean, the draft procedures
5 that we had written was that the case manager would be
6 reviewing this and the case manager would have, you
7 know, some background in, like you say, occupational
8 health nursing or in reviewing worker's comp type of
9 claims. And they would then -- in rejecting an
10 application, would consult a physician -- you know, the
11 worker advocacy physician and director so that --
12 and/or directors so that there would be -- for claims
13 that were -- that were rejected. At that point, there
14 would be some review of those rejections.

15 DR. MARKOWITZ: Because it's understood
16 why you would want to verify that they were employed at
17 DOE. But once you get into the issues of the second
18 two criteria -- is there a medical illness and is there
19 some evidence of -- limited evidence of exposure --
20 then you get into, really, the substance of the matter
21 and it -- it's hard to see how you can really do that
22 superficially in a way that's really fair to people
23 universally.

24 We didn't really discuss within our
25 subcommittee what we thought the criteria should be.

CARPENTER REPORTING, INC.
(303) 752-1200

1 We don't have a specific recommendation. Perhaps we
2 could discuss it now if there's time.

3 DR. WAGNER: I think that there was some
4 discussion of a commitment to making sure that the
5 barriers to referral to a physician panels were as low
6 as possible. That we really didn't want there to be
7 artificial barriers. And at the same time, we
8 recognize the importance of the development of exposure
9 information that was relevant to the physician's panel
10 being able to make a reasonable determination of
11 causality.

12 DR. MARKOWITZ: The question is whether
13 we need to be more specific in our recommendation to
14 the office. Les?

15 MR. BODEN: I had just one concern about
16 that triage function that maybe we wouldn't want to
17 take up, and that is to ensure that there would be
18 nobody who would be kicked out of the process, for
19 example, because the State statute of limitations had
20 expired or because there was a belief that this was not
21 their last injurious exposure or some other sort of
22 state-specific barrier.

23 And I don't know if that had been
24 contemplated at all as a possibility, but I think it
25 might be worthwhile for the committee, if it believes

CARPENTER REPORTING, INC.
(303) 752-1200

1 that that's the wrong way to go, to make itself clear
2 on that point. That is, that people not be barred from
3 going to the physician panels because of some State
4 specific --

5 CHAIRWOMAN SPIELER: Legal barrier.

6 MR. BODEN: -- legal barrier.

7 DR. MUELLER: Well, this is partially my
8 concern. And I really thought that it should just be
9 that if they are an employee and they have an illness,
10 which is essentially what Joe is saying -- if they
11 don't have an injury, they have an illness, it should
12 just go to the physician panel. I mean, we're not sure
13 what these people's exposures were. We're not sure
14 that's been gotten into in as much depth as maybe the
15 physician panels would think about.

16 I don't think that should be a question
17 and I don't think any of the State issues should be a
18 question. If it's that obvious it's unrelated, the
19 physician panel should say it's unrelated. We could
20 say this disease is not related to any possible
21 exposure we're aware of. If they are not sure about
22 the exposure, they can get into it.

23 I think that should at least be out
24 there so there is no problem with anyone not letting it
25 go forward and getting a medical opinion.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. FALCO: Yeah. I think the language
2 in the proposed rule reflected Subtitle D, which talks
3 about what -- what applications would be reviewed by
4 panels. And the two were that the application was
5 filed on behalf of a Department of Energy contractor
6 employee of a State and that the illness or death may
7 have been related to employment at a Department of
8 Energy facility.

9 So that, basically, the -- it was felt
10 that the -- that, on some level, the proposed rule had
11 to reflect the language -- what -- the concepts in
12 Subtitle D.

13 And I'd just say that the -- I -- the
14 proposal that's going to be published does have some
15 discussion as to what applications will be referred to
16 the panels and solicits the public's thoughts or
17 opinions about what these -- what these criteria should
18 be. So I would, you know, urge the committee or the
19 committee members to respond to -- to the proposed
20 rule.

21 CHAIRWOMAN SPIELER: Nevertheless, it
22 might be appropriate for us to make clear our view
23 since it's unlikely that we'll be sitting together as a
24 committee before the comment period closes on this
25 rule, assuming that it actually gets published on the

CARPENTER REPORTING, INC.
(303) 752-1200

1 schedule that was suggested by the Assistant Secretary
2 Cary this morning.

3 So I would suggest that we formally
4 suggest to the Department that cases where physician
5 panel review is requested be referred for physician
6 panel review if there is evidence of DOE employment and
7 assertion of a related illness and that, in particular,
8 all doubts with regard to this be resolved in favor of
9 physician panel review.

10 And further, that specific components of
11 individual State law not be used as a measure of -- for
12 appropriateness for review by physician panels. And I
13 would make that -- since I'm not sitting as chair on
14 that one and Steve is, I would make that in the form of
15 a motion.

16 MR. BODEN: Second.

17 DR. MARKOWITZ: I probably ask for a
18 second since that came from outside the subcommittee.

19 DR. WAGNER: Les just said second.

20 DR. MARKOWITZ: Now you can vote. Is
21 there any discussion? Further discussion?

22 MR. OLSEN: I'm not a voting member, but
23 it seems to -- my position on this is a very, very
24 distinct minority, that this law does not require or
25 mandate a waiver of State law defenses such as statutes

CARPENTER REPORTING, INC.
(303) 752-1200

1 of limitations and that if they still apply --
2 referring a case, if there are certain state-based
3 defenses that would -- would prohibit a claim from
4 being considered valid, that it would be a waste of
5 taxpayers' resources to refer it to a physicians' panel
6 to -- for a determination of causation.

7 MS. POST: I have a question, Emily.
8 Are you just talking about getting to the door, to the
9 physician panels? You're not talking about level of
10 compensation?

11 CHAIRWOMAN SPIELER: No. No. The
12 question, I think, that we have before us is what gets
13 referred so that the physician panel could make the
14 medical causality determination. It actually doesn't
15 raise any of the questions that follow on with regard
16 to State law defenses or any of those other issues,
17 other than perhaps the resource allocation issue that
18 Mark has raised.

19 MS. POST: And so are you -- is your
20 position that in your -- in your motion if a -- if it's
21 right to call it that, would be that so long as the
22 individual meets the criteria, No. 1, being an employee
23 that's covered under this particular act, being an
24 employee at a DOE site or former employee at a DOE site
25 and that there's at least -- the claimant or

CARPENTER REPORTING, INC.
(303) 752-1200

1 individuals are claiming that they have been harmed or
2 have an illness because of that employment situation,
3 that those cases be reviewed or be sent to the
4 physician panel --

5 CHAIRWOMAN SPIELER: Uh-huh.

6 MS. POST: -- without regard to State
7 worker's compensation defenses?

8 CHAIRWOMAN SPIELER: Uh-huh.

9 MS. POST: Okay.

10 MR. ELLENBERGER: Mark raised the -- I
11 think a very valid point, but one that -- that I don't
12 think we need to consider. And that's because
13 individuals who are covered by this law are entitled to
14 all of the procedures of this law, including having
15 their case go to a physicians' panel for a
16 determination of whether or not their condition is more
17 likely than not related, regardless of the outcome in
18 the State worker's comp.

19 That entitlement belongs to the
20 individual and we need to fall clearly on the side of
21 that entitlement.

22 DR. MARKOWITZ: Was your comment
23 about -- following Mark's?

24 MR. BODEN: Yes. I also agree with Mark
25 that the law does not require employers to forego their

CARPENTER REPORTING, INC.
(303) 752-1200

1 defenses. On the other hand, it also does not require
2 the employers to assert their defenses. If a statute
3 of limitations defense, just to take an example, is
4 used to deny a worker access to the physician panel,
5 then the employer doesn't have -- the case will never
6 get to the point where the employer can decide to
7 assert or not assert their defense and the worker then,
8 basically, is unlikely to have a case of any sort.

9 Although I would agree that there would
10 be some physician panel resources that would be spent
11 on cases that could be validly denied because of, for
12 example, statute of limitations defenses, that there's
13 really a tradeoff between spending those resources on
14 claims that eventually get denied for legal or valid
15 reasons and not permitting a group of workers to get to
16 the point where the employer can decide and DOE, in its
17 contractual relationship with the employer, can decide
18 whether or not to forego those defenses.

19 DR. MARKOWITZ: A nonmedical panel only
20 finds about 20 to 30 percent of the claims is there
21 really occupational causality. So it's -- they really
22 do knock off the vast majority of claims. So if you
23 think about the process as a two-stage process with
24 consideration of causality and compensability, which
25 should go first. In either instance, you would be, in

CARPENTER REPORTING, INC.
(303) 752-1200

1 a sense, wasting resources. If you have the initial
2 review being compensability, perhaps the majority of
3 causality wouldn't be obtained. That was a waste of
4 time for the compensability people. And vice versa.

5 I think the risk of wasting resources
6 and time is -- is there regardless of which goes first.

7 Any other comments?

8 CHAIRWOMAN SPIELER: I actually would
9 like to make a comment because I'm staring at the
10 language of the statute right now and this is related,
11 but I just -- I'd like to get this on the record
12 because I have concerns about the way there have been
13 references to the way the State MOU's are going to
14 relate to the development of the physician panel rules.
15 And the submittal of applications to the panels is
16 dependent on the language of the MOU's, which we
17 haven't really discussed and has not been shared with
18 this committee.

19 And I would like to point out that the
20 MOU section of the law, 3661 Sub A, is qualified by
21 "the agreements are to provide assistance to Department
22 of Energy contractor employees in filing claims under
23 appropriate State worker's compensation laws." I focus
24 on the assistance component of that language because it
25 sounds as if, legally, there could be a drafting of an

CARPENTER REPORTING, INC.
(303) 752-1200

1 MOU that would erect barriers to the submission of
2 claims to the physician panels because Subsection C of
3 that same section says if provided in an agreement
4 under Subsection A and if the Secretary determines as
5 Joe just read, then it's to be submitted to the
6 physician panels.

7 And I just want to call the committee's
8 attention to the sort of integration of those two
9 sections of the law and the fact that the MOU's are, in
10 fact, intended to provide assistance to the employees
11 and, therefore, the committee's position that there
12 should be -- that the rules and the OWA should lean in
13 favor of liberal interpretation in order to submit
14 these for review in the physician panels is an
15 appropriate position to be taken. And therefore, I
16 think the motion stands as an appropriate one.

17 DR. MARKOWITZ: If there's no further
18 discussion, can we conduct a vote?

19 CHAIRWOMAN SPIELER: You're handing the
20 chairpersonship back to me?

21 DR. MARKOWITZ: Okay.

22 CHAIRWOMAN SPIELER: Assuming my chair,
23 we have a motion made and seconded that's been
24 discussed. Is there any further discussion on the
25 motion? All those in favor, say aye.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MS. POST: Could I just have the motion
2 restated for clarity, since we've talked about a lot of
3 different things?

4 CHAIRWOMAN SPIELER: I'm not going to be
5 able to restate it in the exact same words and I would
6 like to stand by the words that I previously stated in
7 the formal making of the motion, but as the person who
8 made the motion, the intent of the motion was to say
9 that the -- that cases would be -- we recommend
10 strongly to the OWA, the Department of Energy that
11 cases be submitted to physician panels if there is
12 evidence of Department of Energy employment and
13 assertion of a disease that's related to that
14 employment, and that barriers not be erected to the
15 submission to the physician panels based upon either
16 review of the record or the use of specific State laws.
17 And in particular, the -- that evidence be liberally
18 construed in favor of the claimant.

19 That is a fair restatement, I think, at
20 least of the -- all those in favor? Opposed? Motion
21 passes unanimously.

22 Is there anything further from your
23 subcommittee, Steve?

24 DR. MARKOWITZ: No.

25 CHAIRWOMAN SPIELER: Moving on to the

CARPENTER REPORTING, INC.
(303) 752-1200

1 claims processing. Let me just -- has Pete Turcic ever
2 called in?

3 MS. KEATING: I have left numerous
4 messages at his office and on his cell phone.

5 CHAIRWOMAN SPIELER: Thank you. Don and
6 Vikki, as cochair of the claims processing or claims
7 notification, this is your part of the meeting and I'd
8 ask that you chair it.

9 MR. ELISBURG: Well, in the interests of
10 time, I should point out that the claims processing
11 subcommittee met for about two hours yesterday
12 afternoon. It appeared to have reconvened as a
13 committee as a whole for several hours last night and
14 again for about an hour and a half this morning to
15 discuss the issue of the way in which the claims are
16 being processed under the new activity that's been
17 underway for the last month at the various Resource
18 Centers.

19 So much of what we could talk about has
20 not only been discussed, it's been discussed with the
21 Assistant Secretary, with the staff in terms of the
22 concerns that were being expressed by the members of
23 the committee, subcommittee and, for that matter, the
24 members of the committee over the extent to which
25 claimants coming into the system are being

CARPENTER REPORTING, INC.
(303) 752-1200

1 appropriately advised of all of their rights, being
2 given the level of assistance that is expected when
3 they come into the offices, being provided the support
4 necessary to properly submit the evidence and obtain
5 the evidence and information necessary to move a claim,
6 and all that goes with that process.

7 And a great deal of concern that the
8 Department of Labor has provided a -- a fairly
9 comprehensive system of paperwork that, on its face,
10 certainly seems to dot the I's and cross the T's to
11 move paper.

12 The Resource Centers have a fairly
13 comprehensive manual that we've all received copies of
14 that, again, appears to be a process for handling paper
15 and checking off boxes and moving pieces of paper
16 forward.

17 Whether or not any of that is the kind
18 of information or the kind of instruction and directive
19 necessary to elicit from the people coming in, are they
20 filing for -- for the Federal side, are they filing for
21 the State side, are they -- what are their
22 opportunities and options and so forth, I must say that
23 still remained relatively unclear.

24 We felt that that is an area that needs
25 attention by the agency, including perhaps even

CARPENTER REPORTING, INC.
(303) 752-1200

4 One caveat to all of this, because it
5 does run through the frustration that we had in the --
6 in dealing with the subcommittee yesterday and, really
7 the frustration last night and today -- last night from
8 claimants and today when we started out with the
9 Assistant Secretary. And that is the Department of
10 Energy on the worker's comp side, the State claims
11 side, because it does not have its rule in place, is
12 unable to articulate how they really intend to proceed
13 with these claims, what the criteria are going to be,
14 how the process is supposed to work, and it's kind of
15 all waiting, waiting, waiting for this magic event to
16 happen. And of course, they are precluded from
17 seriously talking about it.

25 I don't know that we had a specific set

CARPENTER REPORTING, INC.
(303) 752-1200

1 of recommendations on -- on this, other than it is
2 obviously the concern that -- that the agency get its
3 act together and really focusing on assisting.

4 Jeanne Cisco did, in fact, make a
5 specific proposal, I believe, at our subcommittee
6 involving the use of the Former Worker programs to help
7 develop information regarding exposure data and
8 toxicity for workers. Is that correct, Jeanne?

9 MS. CISCO: Yes.

10 MR. ELISBURG: You might want to speak
11 to it. I've parsed your e-mail into the equivalent of
12 a motion, but go ahead and talk about what you had in
13 mind and we can put it into the form of a motion that I
14 think we want the committee to adopt.

15 MS. CISCO: The -- I see the need for --
16 for the work history development for the physicians'
17 panel. This is -- anywhere they have former workers,
18 this should be country wide. We need the funding to do
19 that from DOE. I think that the whole process will
20 fail unless we have that, where they can go in and, you
21 know, do the work that they need to do to support these
22 claims or work -- nothing is going to work on a State
23 comp claim. So I don't have that in front of me.
24 That's my motion.

25 MR. ELISBURG: I think all of you

CARPENTER REPORTING, INC.
(303) 752-1200

1 received a copy of the memo that Jeanne sent -- sent
2 out -- and it was forwarded by Emily, I think, for
3 inclusion in your folders -- in terms of the meeting
4 with the Industrial Commission and so forth and so on.

5 Boiling that down to a proposal, let me
6 read what I had parsed out here. That is that we would
7 request the Office of Worker Advocacy to assist
8 claimants in obtaining criteria needed to establish the
9 causality and medical information in their claims as
10 well as to help define the last injurious exposure.

11 This information will be needed -- will
12 need to be developed for the use of a physicians' panel
13 and the adjudication process of the claim. That was
14 point 1.

15 Part 2 was the DOE Office of Workers
16 Advocacy should provide funding to the medical
17 surveillance programs to do the additional work that
18 would establish the job of building exposure
19 information that can be linked with in-depth
20 occupational histories for claimants to give a more
21 complete exposure history.

22 Is that the gist of it?

23 MS. CISCO: Yes. Thank you.

24 MR. ELISBURG: On behalf of the
25 subcommittee, I believe I would move that.

CARPENTER REPORTING, INC.
(303) 752-1200

1 CHAIRWOMAN SPIELER: Can I ask you a
2 question?

3 MR. ELISBURG: Certainly.

4 CHAIRWOMAN SPIELER: Are medical --
5 Former Worker programs available to everyone? Or does
6 that need to be an addition to that motion that
7 addresses those people who need to be addressed?

8 MR. ELISBURG: I don't believe that
9 covers the universe. That's sort of -- part 2 covers
10 the Former Worker programs. Paragraph 1 really says
11 the Office of Worker Advocacy should assist in doing
12 this. So I don't know whether we would want to also
13 say you should fund additional Former Worker programs.

14 CHAIRWOMAN SPIELER: No. I wasn't
15 suggesting that. But I think there needs to be
16 specific reference to the fact that the -- even if the
17 Former Worker programs were funded to do this, that
18 doesn't cover the universe. And it's important for us
19 to -- I've come away from our conversations of the last
20 two days feeling that there needs to be some real focus
21 on how claims are going to be developed for everyone.

22 MR. ELISBURG: The first paragraph
23 really directs or proposes that the Office of Worker
24 Advocacy take a proactive role in assisting the
25 claimants to develop this information.

CARPENTER REPORTING, INC.
(303) 752-1200

1 The second paragraph says that the
2 medical surveillance program should do the work. I
3 suppose you could say the medical surveillance
4 programs, where available, should do the work. And
5 that, I think, covers the issue that you wanted to
6 cover.

7 CHAIRWOMAN SPIELER: Uh-huh.

8 DR. MARKOWITZ: Let me clarify. The
9 Former Worker program probably cover two-thirds of the
10 complex. Not the atomic weapon employers or the
11 beryllium vendors, but the prime contractors in DOE.

12 MR. ELISBURG: The question is what
13 happens to the other third.

14 DR. MARKOWITZ: Provisions should be
15 made.

16 CHAIRWOMAN SPIELER: And all the AWE and
17 vendors -- beryllium vendors.

18 DR. MARKOWITZ: To me, the underlying
19 important notion here is that DOE not keep internal
20 within DOE the development of the proper exposure
21 information in support of a claim. That it should not
22 be simply a process -- because I don't think it'll have
23 any credibility -- that the DOE operations office
24 provides whatever information is available and that the
25 Office of Worker Advocacy engages in a process of

CARPENTER REPORTING, INC.
(303) 752-1200

1 collecting exposure information, directly or through
2 some other indirect process. But if it's kept within
3 DOE, I don't think it'll be credible.

4 MR. ELISBURG: That's our motion.
5 You're chair. I'm moving the motion. I'm sorry. I
6 didn't see you down there.

7 DR. MUELLER: I just had a commentary on
8 the way the beginning of that motion was. It sounded
9 to me we were throwing in last injurious exposure,
10 which gets us back into the State legislative issues
11 and it was mixed with the physician panel. Our prior
12 motion said --

13 MR. ELISBURG: I would be willing to
14 drop that phrase. It's not essential to the process.

15 DR. MUELLER: It kind of mixed up those
16 concepts.

17 MS. POST: Could you make it general
18 like exposure to a toxic substance? Something that
19 mimics the --

20 MR. ELISBURG: Assist claimants in
21 obtaining criteria needed to establish the --

22 DR. WAGNER: Exposure to a toxic
23 substance.

24 MR. ELISBURG: Exposure to toxic
25 substances in their claims.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. BODEN: Do you want to read the
2 whole thing? Now that we've changed it --

3 MR. ELISBURG: Request the office --
4 No. 1, request the Office of Worker Advocacy to assist
5 claimants in obtaining criteria needed to establish the
6 toxic exposure -- exposure to toxic substances
7 involving their --

8 DR. WAGNER: Relevant to -- relevant to.

9 MR. ELISBURG: -- relevant to their
10 claims. All right. Period. This information will
11 need to be developed for the use of the physicians'
12 panel and the adjudication process of the claim.

13 2, the DOE Office of Worker Advocacy
14 provide funding to link the knowledge of the exposure
15 areas and the jobs.

16 3, the medical surveillance programs,
17 where available, should do the additional work that
18 would establish the job or building exposure
19 information that can be linked with the occupational
20 histories for claimants to give a more complete
21 exposure history.

22 DR. MARKOWITZ: One clarification to
23 that. Medical surveillance refers to on-site medical
24 programs for current workers or it can refer to Former
25 Worker medical surveillance programs.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. ELISBURG: I would concede as
2 defined by Dr. Markowitz.

3 DR. MARKOWITZ: I'm not recommending one
4 or the other. I'm --

5 DR. WAGNER: How about both?

6 MR. ELISBURG: I'm assuming whatever
7 program we can find that's available is what Jeanne was
8 talking about, I would assume.

9 You have a whole series of different
10 grants out there that some deal with on site, some deal
11 with our Former Worker programs. With those
12 amendments, can we proceed?

13 MR. BODEN: What was that amendment?

14 MR. ELISBURG: I pass the chair to
15 Emily. I don't want to do this anymore.

16 CHAIRWOMAN SPIELER: As I understand --

17 MR. ELISBURG: It's time to move on.

18 CHAIRWOMAN SPIELER: Why don't you give
19 me the paper. As I understand the motion, it stands as
20 Don read it with the amendment that it include both of
21 the programs that Dr. Markowitz just referenced. Is
22 that --

23 DR. MARKOWITZ: I wasn't recommending
24 that both be included. I was simply stating to clarify
25 that, if you simply state medical surveillance program,

CARPENTER REPORTING, INC.
(303) 752-1200

1 it can refer to either. I run a Former Worker program,
2 so I'm on the verge of conflict of interest and I don't
3 want to pursue it any further. Let me --

4 CHAIRWOMAN SPIELER: Okay. Then let
5 me -- Jeanne?

6 MS. CISCO: I had a Former Worker
7 program in mind. That's the one I deal with. If you
8 use the current worker, then you're getting back into
9 the medical surveillance of the plant there.

10 CHAIRWOMAN SPIELER: So you
11 specifically --

12 MS. CISCO: Outside --

13 CHAIRWOMAN SPIELER: That then the
14 language of the motion should read, rather than medical
15 surveillance, Former Worker programs?

16 MS. CISCO: Yes.

17 CHAIRWOMAN SPIELER: And Steve raises an
18 important point here. There are several people on this
19 committee, I believe, who are involved in the Former
20 Worker programs. I would suggest that we split this
21 motion in half. That it has two components, and we
22 vote first on the component that simply asks OWA to
23 provide clear assistance to the claimants as that
24 motion -- the first paragraph, No. 1 was read by
25 Mr. Elisburg.

CARPENTER REPORTING, INC.
(303) 752-1200

1 Is there further discussion of that
2 component of the motion? All those in favor? Opposed?

3 The second component is the Former
4 Worker programs be asked to do this and paid to do it.
5 And as I understand it, several members of this
6 committee are involved in Former Worker programs and,
7 therefore, can be deemed to be conflicted on this
8 issue. And I would ask that those people identify
9 themselves so that you will not vote on this motion.

10 Perhaps it would be appropriate to table
11 this motion. It appears that one, two, three, four --
12 six people who are voting members of this committee
13 have -- seven -- six have a financial interest in the
14 Former Worker programs in some way or other.

15 And I think, as chair, I'm going to ask
16 that this component of the motion be tabled unless
17 there's strong objection to that.

18 MR. ELISBURG: I have to abstain.

19 CHAIRWOMAN SPIELER: Oh, okay. I didn't
20 actually count you. So -- as one of the few people in
21 this room who have no financial relationship with the
22 Former Worker program, I am discomfited by passing a
23 motion by a small minority of people on this committee
24 and I would ask that it be tabled, but that the issue
25 be considered by the OWA and not adopted formally by

CARPENTER REPORTING, INC.
(303) 752-1200

1 this committee.

2 MR. BODEN: You don't want it to be
3 tabled.

4 CHAIRWOMAN SPIELER: I'm sorry. Not
5 tabled. Tabled as a motion, a formal motion.

6 MR. BODEN: Not tabled to reappear at
7 some later time.

8 CHAIRWOMAN SPIELER: Perhaps it should
9 be withdrawn by the committee. Is that acceptable to
10 you? Withdrawn?

11 MR. BODEN: Withdrawn, yes.

12 CHAIRWOMAN SPIELER: Is that acceptable
13 to the committee?

14 MR. ELISBURG: I have to defer to
15 Jeanne.

16 CHAIRWOMAN SPIELER: Is it okay? I
17 mean -- this is a very difficult situation for us.

18 MS. POST: As a person who has no
19 financial -- I join with you, Emily. I'm one of the
20 few persons that doesn't. It makes a lot of sense.
21 The problem is it does make a lot of sense, so I would
22 like to see it, in some form or another, at least
23 suggested or whatever --

24 CHAIRWOMAN SPIELER: Okay.

25 MS. POST: -- without saying that --

CARPENTER REPORTING, INC.
(303) 752-1200

1 CHAIRWOMAN SPIELER: For those of us who
2 have no financial interest --

3 DR. WAGNER: Could we identify those
4 without financial interests so we can --

5 CHAIRWOMAN SPIELER: Gregory Wagner,
6 Ricky Blea, John Burton, Glenn Shor, Iris Post, Vikki
7 Hatfield, and myself. That is actually enough. I
8 miscounted. Then the motion is on the table.

9 MS. KIMPAN: Madam Chair, there is a
10 document that I think even those with need to divest
11 themselves from this part of the discussion, in the
12 claims procedures documents, that the Office of Worker
13 Advocacy has put forth thus far which are, indeed,
14 subject to change and revision, we do, indeed, say that
15 is those programs in all of the ways that Dr. Markowitz
16 described them that ought to do this work.

17 So we are hearing this message and I
18 believe have heard it before this, and you have OWA's
19 attention on the need for it.

20 CHAIRWOMAN SPIELER: The problem is,
21 procedurally, we have a motion --

22 DR. MARKOWITZ: I have a procedural
23 question.

24 CHAIRWOMAN SPIELER: Yeah.

25 DR. MARKOWITZ: If certain members are

CARPENTER REPORTING, INC.
(303) 752-1200

1 ineligible to vote by view of conflict of interest, the
2 remainder of the committee becomes the quorum.

3 CHAIRWOMAN SPIELER: Right. We have a
4 motion. It's -- it appears to be, as Kate Kimpan has
5 just told us, consistent with policy. In order to move
6 this meeting forward, I'm going to call the motion.

7 All those in favor of the motion of
8 having Former Worker programs perform this work and be
9 paid for it, say aye. Opposed?

10 Okay. The motion, again, carries
11 unanimously by those members not conflicted on the
12 issue who were voting.

13 Are there other issues that need to be
14 considered by the full committee for the claims
15 processing?

16 MR. ELISBURG: I'd like to -- to defer
17 to my co-chair. I said I would after we took care of
18 this, pass on to anything else that they feel they want
19 to raise. I don't think we came forward with a whole
20 series of motions, but I think we have expressed
21 concerns that this committee has already expressed to
22 the management.

23 MS. HATFIELD: And Don is right. We
24 talked about a lot of things for two hours and a lot of
25 those things, we've already talked about in full

CARPENTER REPORTING, INC.
(303) 752-1200

1 committee. We talked a lot about worker's comp and
2 flow and how that's going to go. I think we have
3 addressed a lot of those concerns and would hope that
4 the Advocacy Office is going to move forward with that
5 in an expedient manner and not put it on hold for a lot
6 longer.

7 We also had some concerns about the flow
8 of paperwork, which we've already talked about, again,
9 in full committee. We've talked about how the flow was
10 going and about recontacting the workers so many times.
11 We had a concern with that.

12 And I think we are trying to address it.
13 And those were our major concerns yesterday.

14 Jeanne, do you have anything you want to
15 add?

16 MS. CISCO: I think we've covered it.

17 DR. WAGNER: One of the questions that
18 came up in one of the other subcommittees that I was in
19 had to do with an OWA apparent operational decision not
20 to use computerized records. And as I hear you and --
21 and some others talking about concerns about having
22 individual workers contacted many times, potentially,
23 to get duplicative information, did your group talk
24 about the potential value of having a single
25 computerized record that would be transferred among the

CARPENTER REPORTING, INC.
(303) 752-1200

1 agencies efficiently in order to kind of expedite the
2 process and avoid duplication of effort?

3 MR. ELISBURG: I don't think we did. We
4 would have loved to have had the opportunity.

5 MS. HATFIELD: It was our understanding
6 that the -- that these things are not tied together.
7 And so I'm not sure how that would -- are they tied --
8 I mean, the paperwork flow is not --

9 MS. KIMPAN: There is -- there are
10 computer interfaces that DOE will own that will have
11 every aspect of a claims tracking process. DOE will
12 own those, the DOE claimants. DOL has a similar
13 computerized process.

14 DR. WAGNER: I'm not talking about the
15 claims tracking process.

16 MS. KIMPAN: The entire claims process.

17 DR. WAGNER: I'm not talking about the
18 entire claims process.

19 MS. KIMPAN: Okay.

20 DR. WAGNER: What I'm talking about is
21 the ability to transfer scanned records. The actual
22 data on exposures, employment histories, medical
23 records that may be of relevance to more than one
24 program and may be of relevance to the, for example,
25 people in Washington who I now find out are the case

CARPENTER REPORTING, INC.
(303) 752-1200

1 managers and people in the field who may be, you know,
2 gathering and transmitting information.

3 I'm concerned, as somebody who deals
4 with a lot of paper records, about the overwhelmingly
5 burdensome task of both developing, cataloging,
6 storing, shipping, receiving, and tracking the
7 fundamental records themselves.

8 I mean, clearly, you know, you've got a
9 checklist that says this is the flow. This is where we
10 are in the flow. That's the simple part. But trying
11 to ensure that people have timely access to all
12 relevant medical and exposure and employment
13 information in multiple claims that may be being
14 pursued concurrently, I think would be an important
15 thing to consider.

16 MS. HATFIELD: I appreciate your
17 bringing that forward, and I think that is a really
18 good idea. I think it can save some time.

19 MR. ELISBURG: Does that need to be a
20 motion?

21 DR. WAGNER: I don't think so. I mean,
22 I think that we should suggest this as being an idea
23 that the department should consider in trying to work
24 with DOL and develop an efficient process.

25 Again, this is under the general

CARPENTER REPORTING, INC.
(303) 752-1200

1 assistance issue. You assist people by making their
2 claims pursued timely without bothering them, you know,
3 multiple times to get the same information.

4 CHAIRWOMAN SPIELER: Yeah. I think, you
5 know, a dozen years ago, when I headed a State
6 compensation program and this current scanning
7 technology was unavailable, there were huge problems
8 with data sharing. And now that we have this
9 technology and it isn't that expensive, it does seem to
10 me that -- that scanned documents that can be shared
11 among HHS, DOL, and OWA on claims that are relevant --
12 it seems like that would make sense.

13 And that may require some additional
14 form at the front end from the claimant to allow -- to
15 overcome any confidentiality concerns where there are
16 multiple claims filed.

17 So in order to actually make this
18 happen, you would not only have to set up the system,
19 but also figure out how to get authorization from the
20 claimant to do it. And it does seem like it would make
21 a lot of sense.

22 DR. WAGNER: There would also clearly
23 need to be communication, coordination among the
24 agencies that are involved which we've previously urged
25 and continue to urge. And also, probably an upfront

CARPENTER REPORTING, INC.
(303) 752-1200

1 allocation of resources to make sure that the
2 technology was available and that it was consistent
3 among the agencies to scan in relevant records.

4 CHAIRWOMAN SPIELER: I think that the
5 minutes should reflect that there are many heads going
6 up and down in this room and that there's clearly a
7 feeling on this committee that this is an idea that
8 should be pursued.

9 MS. POST: I guess I would say, Emily,
10 in conjunction with my agency looking at scanning
11 versus going direct data input, there are a lot of
12 problems with scanning. There is some -- lots of
13 limitations about the numbers and kinds of documents
14 you can scan, availability of scanning.

15 I'm not sure it's a very good solution
16 to this particular problem, and so I guess I want to
17 note for the record that I'm not exactly a strong
18 proponent of that particular technology.

19 I think there's other technology that
20 might be able to assist with some of this. I'm not
21 sure that this is the answer.

22 DR. WAGNER: Yeah. Maybe "scanning" was
23 too specific and what it is is the committing to
24 electronic and sharing of records among the different
25 programs and agencies developing the means to do that

CARPENTER REPORTING, INC.
(303) 752-1200

1 as the goal and letting the specific technological fix
2 be one that the department explores.

3 MR. BURTON: I think there was a
4 discussion we had this morning with Steve Cary about
5 the question of forms. If you're going to share
6 information, it makes a whole lot of sense to have
7 identical questions being asked, being used by both
8 tracks of this thing because if you share it, but it
9 doesn't quite fit what you need anyhow, you're still
10 going to have to go back and ask a person. So I think
11 that's kind of a prerequisite of sharing, some very
12 close coordination of what both sides are asking for.

13 DR. WAGNER: I think at the end of the
14 day, there are certain fundamental things that need to
15 be known: Where have you worked and when, what have
16 your exposures been and what kind of health outcomes do
17 you feel that you have as a result of those. In common
18 to all --

19 MR. BURTON: There's probably 50
20 different ways to ask each of those questions, and I
21 think we want to get it done one way.

22 DR. WAGNER: Yeah. And I also think
23 that the issue is the -- not the questions, but the
24 answers need to be both relevant to all agencies and
25 shared among them.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. ELISBURG: Can we move to another
2 topic?

3 On the issue of claims processing, there
4 is one matter that came up a couple times yesterday and
5 then I saw it again this morning, and I don't know if
6 you were going to raise it elsewhere. I thought we
7 were going to raise it with Pete, but Pete's not
8 around. And that is the Department of Labor, in asking
9 for additional information from claimants, is sending
10 out some relatively Draconian letters to claimants,
11 putting them on 30-day time tables and so forth which
12 give the impression that if this information isn't in
13 within 30 days, all is lost. And they may be asking
14 for information that in no way is ever going to be
15 obtainable in 30 days.

16 And I think we should go on record in
17 some fashion with the Department of Labor, suggesting
18 that they chill out a little bit on their letters and
19 perhaps make them a bit more user friendly and time
20 sensitive, understanding that, certainly, at the
21 beginning of this program, sending letters like out to
22 people who have waited 25 years to do something is not
23 really user friendly.

24 CHAIRWOMAN SPIELER: Jeanne?

25 MS. CISCO: There again, you know, the

CARPENTER REPORTING, INC.
(303) 752-1200

1 letters that are coming back are asking for specific
2 medical information. They have medical releases. I
3 think they should be getting that information for the
4 claimant. That would, you know --

5 CHAIRWOMAN SPIELER: Actually, the
6 example that I've been shown actually suggests that
7 they may also be asking for additional medical testing.
8 You had this test that's relevant to chronic beryllium
9 disease but not that one. We want a result from that
10 other one within 30 days, which does seem like a fairly
11 preposterous request, since, then, an appointment has
12 to be made with a physician.

13 I would suggest that this committee do
14 what Don has suggested and urge the Department of Labor
15 to change their correspondence which is not driven at
16 all by any legal requirements that I can find in either
17 the statute or their rules, and that we ask the OWA --
18 specifically in view of Pete Turcic's failure to come
19 to this meeting, either telephonically or otherwise,
20 that we ask OWA to communicate our concern with regard
21 to these time limits to the Department of Labor and our
22 request that the letters be reconsidered and redrafted.
23 Is that --

24 MR. ELISBURG: I think Ricky had another
25 addition he wanted to make.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. BLEA: The addition I wanted to
2 consider is we heard last night from various speakers
3 that when they left the Resource Center, they had no
4 idea what they signed or what they did. What I would
5 like to see -- or we would like to see is when they
6 leave the Resource Center, that they have a piece of
7 paper saying that you signed for Federal, you signed
8 for the State worker's comp, you did this, this, and
9 this like a checklist.

10 I understand they are giving them a copy
11 of everything they did, but everybody who spoke last
12 night said I don't know, I just signed the papers and
13 that's it. One gentleman even said that he had sent
14 various copies to Washington, D.C. to various agencies,
15 which I think is going to make the situation more
16 complex.

17 But if each claimant had a piece of
18 paper with a checklist saying this is what you did here
19 today, then they would know what they -- exactly what
20 they did and where their information was going.

21 I don't know -- I'm not trying to create
22 more paperwork, but the claimant should -- should know
23 what they signed and what's happening to them and what
24 they did. Maybe there's something that they should
25 have done that they didn't do by looking at the

CARPENTER REPORTING, INC.
(303) 752-1200

1 checklist.

2 CHAIRWOMAN SPIELER: Kathryn.

3 DR. MUELLER: On the same vein, I think
4 it's really important that there's a better
5 understanding at the office and of the claimants about
6 State worker's comp issues since, obviously, these
7 people think that they, in fact, have filed a claim
8 with the State, which, of course, has not happened at
9 all. So it needs to be expressed to them that no, the
10 only thing you have done is, you know, applied for a
11 physician panel decision and then we'll let you know
12 about applying for a State comp claim, since they are
13 under this impression that they filed a State worker's
14 comp claim, which they haven't. That really needs to
15 be clarified.

16 MR. ELISBURG: That's our subcommittee.

17 CHAIRWOMAN SPIELER: I would just add
18 one other thing to that, actually, which is that I
19 think it would be useful for both DOL and OWA to send a
20 postcard out to people: We've set up your claim file,
21 it's been received in Washington, here's the number we
22 have it filed under.

23 You know, just because it was clear,
24 also, from the people who spoke last night that they
25 didn't -- it sort of went into a black hole, from their

CARPENTER REPORTING, INC.
(303) 752-1200

1 point of view, and a lot of programs send those kinds
2 of postcards out. And I think it would be really
3 reassuring to a population that's pretty on edge if
4 they just got acknowledgment, yes, we have a file, it's
5 filed under this number and this name, and we're
6 working on it.

7 DR. WAGNER: In addition, again, with
8 claims management being a D.C. function, until it's a
9 field function, I think putting a name and a contact
10 number or in some other way identifying a human being
11 responsible for the management of a claim would be
12 critical to provide this human assistance link.

13 MR. BURTON: I thought that was Kate
14 Kimpan's --

15 DR. WAGNER: There you go.

16 MR. BODEN: This is Kate's home number.

17 DR. WAGNER: But, I mean, I think doing
18 that would also be a motivator to give reasonable
19 feedback that says, you know, along with Ricky's
20 checklist, this is what you filed, this is what you
21 haven't, along with -- with Kathryn's suggestion, you
22 haven't yet filed a State claim. You can expect to
23 hear from, you know -- to get a number for your file
24 within ten days. You can expect to get requests for
25 additional information within 30 days or whatever.

CARPENTER REPORTING, INC.
(303) 752-1200

1 But there can be some framing so that
2 people don't feel that they are going to hear something
3 tomorrow, but that they do have a reasonable idea about
4 when somebody is going to get back to them and get back
5 to them in what way.

6 MR. ELLENBERGER: Can we make sure that
7 OWA convey this recommendation to DOL?

8 CHAIRWOMAN SPIELER: Yeah. I think this
9 is meant as both a recommendation with regard to the
10 OWA setting up a claims file and also with regard to
11 DOL and so we would ask that that be added to the
12 communication from OWA to DOL on our behalf with regard
13 to the communication back to people in the field.

14 MS. KIMPAN: By virtue of a response
15 from DOE or OWA on this, the Office of Advocacy does
16 contemplate such correspondence once a claim file is
17 begun and we are at the early stages of beginning to
18 assemble those. We absolutely, per Kathryn's
19 suggestion, will be communicating with people. Per the
20 concerns that people are getting varied information in
21 one place or, certainly, around the country, we are, at
22 headquarters, working hard and we have people in the
23 field to centralize and make similar those messages.
24 And we will conduct again tomorrow a multi-hour call
25 with all the Resource Centers, saying, again, no one

CARPENTER REPORTING, INC.
(303) 752-1200

1 that you have spoken to today is filing for worker's
2 compensation. They are filing either to go to DOL for
3 claim consideration or to come before a doctor panel
4 for other toxic illnesses.

5 So we are very consistent from
6 headquarters in that message and the Resource Centers
7 are working hard, certainly, in their personal reports
8 with us to convey a very concise message. I think we
9 have a lot of evidence to suggest that isn't happening
10 yet and we're working hard.

11 We conduct weekly calls with every
12 Resource Center on the line that, last week, went for
13 three and a half hours. I made that point individually
14 for centers around the country, yet there is still
15 confusion.

16 So -- I think we're aware of the
17 confusion based on the calls we're getting and we're
18 working from the DOE end, at least, to clarify the
19 message of the Resource Centers and we will take
20 whatever messages you want to DOL in tomorrow morning's
21 interagency call.

22 CHAIRWOMAN SPIELER: Wonderful. I have
23 to say, I think confusion is inevitable at this point
24 and it may be inevitable in the long run. From my
25 experience in the black lung program, people still

CARPENTER REPORTING, INC.
(303) 752-1200

1 can't distinguish between their State and Federal
2 claims and the program has been in place for well over
3 20 years, so, you know, I think you do the best you
4 can, but feedback is important. And I think that's the
5 essential message that this committee wants to convey.

6 Anything else with regard to claims
7 filing processing and so on?

8 Iris? State relations.

9 MS. POST: Okay. This will be a short
10 report so we can get back maybe on schedule or we'll
11 have -- primarily, the meeting yesterday concerned that
12 memoranda of understanding. There has been a change
13 recently in the Office of Worker Advocacy about the
14 MOU.

15 Kate Kimpan had been working with states
16 getting their agreement to the initial draft that had
17 been forwarded to all State administrators. It was
18 very general. Pursuant to recent instructions, she and
19 others in the office have been told to put a hold on
20 any further actions or interrelationships with State
21 agencies on the assigning of those MOU's that are
22 currently outstanding to the various states.

23 Currently, the Office of Worker Advocacy
24 has been working with DOL and others in development,
25 writing of new rules on MOU's and what those need to

CARPENTER REPORTING, INC.
(303) 752-1200

1 say. Apparently, those should be coming out in the
2 next week or two for comment, for a 30-day comment
3 period. Because the Act does not provide for any
4 statutory deadlines, DOE cannot go the route that DOL
5 has in issuing the interim final rules and accepting
6 comments as they go along and, basically, undertaking
7 business under those interim final rules.

8 DOL needs to make sure that they go
9 through the full-fledged rule-making process, which
10 will take some time.

11 Currently, until those rules are made
12 public pursuant to the Federal Register in the next
13 week or two, they cannot be made available to members
14 of the subcommittee or the full committee.

15 So, basically, the State agency
16 relations committee is kind of in a holding pattern
17 until we have access to those rules and then we can
18 formulate some comments, either on a state-by-state
19 basis as a full committee, as a subcommittee, or
20 whatever.

21 So time is going to be kind of the
22 essence that we all communicate with each other via
23 e-mail as to any suggestions or comments that we could
24 make as a full committee on those MOU's and what we
25 think needs to happen to better facilitate the process

CARPENTER REPORTING, INC.
(303) 752-1200

1 set in place by the Act.

2 CHAIRWOMAN SPIELER: I actually would
3 like to pass the chairpersonship to John Burton for a
4 moment because I would like to make a motion that has
5 not been considered by the subcommittee with regard to
6 State relations. Are you willing to --

7 MR. BURTON: I am prepared to accept
8 that responsibility. Is it time for lunch?

9 CHAIRWOMAN SPIELER: This is actually
10 as -- as a preamble to my motion, this is about my --
11 partly about the point I raised before about the
12 interrelationships between the MOU's and the
13 functioning of the physician panels and the view that I
14 think most members of -- or maybe all members of
15 this -- all voting members of this committee share with
16 regard to the fact that we would like as many of these
17 claims that have an appearance of being meritorious to
18 get to the physician panels without excessive
19 roadblocks being placed before them.

20 And that we are very concerned about the
21 interrelationship between the State memorandum of
22 understanding and the -- getting the claims to the
23 physician panels.

24 And so I would like to make a motion
25 that we -- that the memorandum of understanding that

CARPENTER REPORTING, INC.
(303) 752-1200

1 are developed with the states be consistent with the
2 language of the statute that says that these
3 memoranda -- these agreements are to provide assistance
4 to DOE contractor employees and that, in particular,
5 provisions of these memoranda of understanding not be
6 utilized to create any barriers that, based upon State
7 law or State compensability requirements, would stand
8 in the way of having these claims reviewed by the
9 physician panels. That's my motion.

10 MR. BURTON: All right. Since this is a
11 new motion, it would require a second.

12 MR. BODEN: Second.

13 MR. BURTON: Second, Les. Discussion?
14 Apparently, your motion is very good or very bad.

15 MR. BODEN: Or it's close to lunch.

16 MS. POST: Whenever you say
17 compensability, you kind of open the door to lots and
18 lots of different interpretations, so I would just
19 like, for my own edification, maybe a definition or
20 clarification of what -- when you use that in terms of
21 the motion, what do you mean?

22 CHAIRWOMAN SPIELER: Well, I'm talking
23 about any rules that States use to make determinations
24 about whether claims should enter a payment status.
25 That is, not how much they get paid, but whether they

CARPENTER REPORTING, INC.
(303) 752-1200

1 are legitimate claims within the -- within the State
2 system.

3 And what I'm suggesting by the motion --
4 and if I didn't say it clearly, then somebody should
5 amend the motion, but what my intent is is that those
6 rules not be used as a barrier to getting physician
7 panel review of the claims. Any use of those rules
8 subsequent to that physician panel is not addressed by
9 this motion, and I'm not addressing the motion to the
10 MOU's with regard to the utilization of those rules at
11 any later point, although I may have opinions about
12 that.

13 This is solely directed at whether or
14 not -- because of the specific language of the statute
15 that says if provided in an agreement -- in an
16 agreement under Subsection A, that is the MOU's that
17 we've been discussing and if the Secretary determines
18 that the applicant submitted reasonable evidence under
19 Subsection B2, the Secretary shall submit the
20 application to a physicians' panel.

21 And what I'm suggesting is that I
22 personally would like to see a system where the MOU's
23 are not used in order to prevent the submission to the
24 physician panels. That's specifically what this is
25 addressed to. And so the issue of compensability is

CARPENTER REPORTING, INC.
(303) 752-1200

1 there are myriads of rules in every State about what
2 claim can be paid under State law, what defenses can be
3 raised to a claim under State law and how those
4 defenses should be reviewed once they are raised.

5 What I'm suggesting is that shouldn't be
6 the subject of whether a claim that's filed with OWA
7 gets to a physician panel.

8 MR. BURTON: Just so I understand,
9 you're not suggesting -- well, would it be appropriate,
10 in your view, that MOU's would deal with procedures
11 after a physician panel has made their decisions?
12 You're not moving that?

13 CHAIRWOMAN SPIELER: I'm not addressing
14 that in this motion.

15 MR. BURTON: Fine.

16 CHAIRWOMAN SPIELER: All I'm saying is
17 that they shouldn't trigger a barrier to getting to
18 physician panels. That's a separate and, I think,
19 complex conversation.

20 MR. BURTON: Just so we understand what
21 we're voting on. All right. Other comments?

22 CHAIRWOMAN SPIELER: So let me -- just
23 to sort of clarify, my motion doesn't require a waiver
24 of anything other than that it's not to be used at this
25 point in the processing of a claim.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. BURTON: So that employers,
2 carriers, or even States are not going to be required
3 to waive any --

4 CHAIRWOMAN SPIELER: Not based on this
5 motion.

6 MR. BURTON: Not based on this motion.
7 But those objections would take place, presumably,
8 after the physician panel has made its decision.

9 Other comments, questions? All right.
10 All in favor signify by saying aye. Opposed?

11 Madam Chair, I return the
12 responsibilities to you.

13 CHAIRWOMAN SPIELER: Okay. Thank you.
14 Is there anything further from the State relations
15 subcommittee?

16 MS. POST: Not from me.

17 CHAIRWOMAN SPIELER: Okay.

18 MS. POST: Unless Kate has a comment.

19 CHAIRWOMAN SPIELER: Contractor
20 subcommittee.

21 MR. BURTON: Okay. Let me give a brief
22 report on our meeting status yesterday and this will
23 lead up to a motion that we're going to ask you to
24 endorse.

25 The contractor insurer cooperation

CARPENTER REPORTING, INC.
(303) 752-1200

1 subcommittee has spent an amount of activity this
2 spring trying to draft language for a pilot proposal
3 whereby we could get a current -- a contractor with a
4 current relationship with the Department of Energy to
5 start as of August 1 or earlier a program of -- of
6 paying benefits.

7 The decision was made by the procurement
8 office in the Department of Energy that they did not
9 want a pilot program. The rationale was that this was
10 conveyed in a phone conversation from Kate, to Emily
11 and myself, that because there is a field notice in
12 place, 350.6, that a pilot program was not needed
13 because there was guidance in place to handle the
14 payment of these claims.

15 Now, our committee, obviously, accepted
16 that decision, although I don't think we were
17 persuaded, necessarily, that the procurement office is
18 correct on this, that there isn't some value to a
19 pilot, but we've accepted that for the sake of our
20 discussions yesterday and then asked what other useful
21 contributions could our subcommittee make.

22 One of the things we noted is that
23 350.6 primarily is of assistance in the case of a
24 contractor who has a current relationship with the
25 Department of Energy. And while there may be some

CARPENTER REPORTING, INC.
(303) 752-1200

1 problems with those employers, it's -- it's only a
2 subset of the kind of employers, insurers that the
3 Department of Energy is going to have to deal with in
4 order to implement this program.

5 For example, there may be certain
6 circumstances where decisions are being made by third-
7 party administrators who are not technically the
8 immediate contractor.

9 There are subcontractors. And again,
10 there's an issue of how they will be affected by
11 efforts to pay these benefits.

12 There are former employers who are no
13 longer in existence and in some cases, the operator of
14 a current site may have some responsibilities for those
15 claims coming out of that site and other cases, there
16 may be no active employer at that site. And of course,
17 there are also insurers who have some concerns about
18 the operation of this program, how this will affect
19 experience ratings and how will they be -- will they be
20 liable -- if you direct a current contractor to make a
21 payment, how does that get sorted out through the
22 insurance mechanism.

23 So we kind of ultimately came to a -- a
24 view that there's really a separation that needs to be
25 made between currently responsible contractors for whom

CARPENTER REPORTING, INC.
(303) 752-1200

1 350.6 provides a fair amount of guidance and then these
2 other kinds of arrangements, insurers, employers and so
3 on and that we are unclear about exactly what problems
4 the Department of Energy is going to face in dealing
5 with these other entities. And we've heard some
6 feedback, sort of on an anecdotal level, about
7 resistance or reluctance to cooperate, including some
8 from current responsible contractors.

9 We felt that we were at a stage where
10 there was a considerable value for some fact finding,
11 some gathering of additional information. And so what
12 our subcommittee has recommended and is bringing to
13 you, this committee, for endorsement is the convening
14 of a hearing as soon as possible under, I guess, the
15 auspices of the subcommittee because the focus would be
16 on this contractor and insurers community, to invite
17 comments from insurers, employers, and from other
18 interested parties on the range of issues that I've
19 just talked about and to help us resolve the
20 information that will be useful to the Department of
21 Energy and also helpful to our subcommittee and
22 ultimately the committee as a whole to formulate
23 recommendations.

24 We feel at the present time, we are just
25 too much -- there's too little solid information to

CARPENTER REPORTING, INC.
(303) 752-1200

1 really base these -- any kind of meaningful, useful
2 recommendations on.

3 So our recommendation is that we convene
4 a hearing as soon as possible, which practically means
5 probably October, that we invite all types of
6 employers, current employers, former employers, TPA's,
7 insurers, to essentially come in and convey to us their
8 recommendations, their concerns about what's happening
9 or not happening, and then we would then use that
10 information to go forward as a subcommittee.

11 So that's -- Madam Chair, I present that
12 as a recommendation. We would ask that this committee
13 endorse the request to the Department of Energy that on
14 our behalf, they convene as soon as possible a hearing
15 to be conducted by the subcommittee on behalf of the
16 committee, the expectation being any member of the
17 committee would be welcome to attend.

18 So that's the motion.

19 CHAIRWOMAN SPIELER: Discussion?

20 MR. ELISBURG: I think it's a great
21 idea.

22 CHAIRWOMAN SPIELER: Okay. It comes
23 moved and seconded. All those in favor? Opposed?

24 I would ask that, given my own personal
25 situation, OWA work directly with John in trying to set

CARPENTER REPORTING, INC.
(303) 752-1200

1 this up and --

2 MR. BURTON: I didn't make this part of
3 the motions, but I might also note we've had several
4 suggestions about possible locations from members of
5 our subcommittee and I think the general consensus was
6 probably not Washington, although there's some
7 advantages to that, but more likely a place that's
8 closer to where the contractors, subcontractors,
9 insurers are.

10 We've heard suggestions including
11 Denver, Salt Lake City, and Cincinnati. Obviously,
12 that's something that will need to be worked out. But
13 it -- the spirit of this is probably do this someplace
14 other than Washington.

15 CHAIRWOMAN SPIELER: One issue -- is
16 there anything further?

17 MR. BURTON: I think that's it.

18 CHAIRWOMAN SPIELER: There was an issue
19 that came up this morning that I would like to re-raise
20 which -- because the Assistant Secretary kind of turned
21 back to the OWA staff on this and that was kind of a
22 concern to me, which is the question of ensuring that
23 there would be no contractual penalties that might
24 result from compliance with 350.6. That -- with regard
25 to, for example, any reporting of injuries, stuff that

CARPENTER REPORTING, INC.
(303) 752-1200

12 MR. OLSEN: I think so. It's easy to
13 do. You just carve out payment of these types of
14 claims from counting against whatever metric the
15 contractor has for --

25 MS. KIMPAN: Is it appropriate for me to

CARPENTER REPORTING, INC.
(303) 752-1200

1 continue to deal with John on this issue since it was
2 brought in a prior acquisition letter?

3 CHAIRWOMAN SPIELER: Yes. Absolutely.
4 Is that okay?

5 MR. BURTON: That's fine.

6 CHAIRWOMAN SPIELER: And well, it is
7 noon, but I would suggest that with the committee's
8 forbearance, we go directly to the performance
9 evaluation, which I believe will be brief.

10 MR. BODEN: Considering the important
11 event to follow, yes.

12 We had, I think, quite a productive
13 subcommittee meeting yesterday. Particularly so
14 because Vern McDougal was kind enough to attend the
15 meeting. Vern is one of the contractors working with
16 DOE to develop their tracking of information system
17 which would be basically the bedrock of any performance
18 evaluation system, and I might add also would be --
19 would probably be necessary for the physician panel
20 quality assistance that -- that Steve Markowitz talked
21 about this morning.

22 Let me just really mention two things:
23 One is that we agreed that Mr. McDougal and our
24 subcommittee would be in contact and would share in
25 ideas in the development of this tracking system with

CARPENTER REPORTING, INC.
(303) 752-1200

1 the idea that the tracking system would have, as one of
2 its major functions, providing data for performance
3 evaluation of the program as a whole and also
4 potentially for the -- specifically for the physician
5 panel quality assurance part of the program.

6 Let me also add that the actual
7 development of a specific system is dependent on the
8 finalization of the procedures that are going to be
9 used by OWA. So that, really, either an initial system
10 has to be developed with considerable flexibility to
11 take into account any developments or changes in either
12 the physician panels or other parts of the claim
13 processing system or it will have to await the final
14 development of that system.

15 Certainly, my sense is that an initial
16 system should be developed, but that there has to be
17 some flexibility built in to accommodate changes that
18 are going to be occurring over the next several months
19 in how the overall system will be handled.

20 That's pretty much it.

21 CHAIRWOMAN SPIELER: Is there anything
22 from the subcommittee that needs the action of the full
23 committee, do you think, at this time?

24 MR. BODEN: No.

25 CHAIRWOMAN SPIELER: Okay.

CARPENTER REPORTING, INC.
(303) 752-1200

1 DR. WAGNER: The -- this is not action,
2 but I think that the one issue that we did focus on was
3 that each claim, each person who comes into the office
4 that there is a resolution to their contact with the
5 office and that this resolution should be considered
6 and explicitly recorded what the resolution is and when
7 and where it occurs.

8 MR. BODEN: Yeah. Essentially, we need
9 to develop a process that tracks people from the moment
10 they first make contact with the intake office until
11 the final resolution of their claim or rejection, if
12 there is rejection somewhere along the way. And the
13 reasons for -- the things that happen along the way
14 have to be specified.

15 For example, we -- we talked this
16 morning about the issue of whether a case would --
17 where there was a request from a physician panel would
18 be sent to the panel. Well, if it wasn't sent, there
19 ought to be something in the tracking system that gives
20 a reason. Was it because the person didn't want to
21 file a claim, had they already filed a claim and were
22 they receiving benefits or, you know, what was the
23 reason?

24 So those -- those kinds of lists would
25 have to be built into a system and, indeed, I think the

CARPENTER REPORTING, INC.
(303) 752-1200

1 ideal way to do that is to start off with a list of
2 boxes, leave some text, and then add boxes as you learn
3 about the different ways that the -- that the outcomes
4 get handled.

5 CHAIRWOMAN SPIELER: Further discussion?
6 Okay. Let me just say, our schedule calls for lunch
7 now, followed by a couple of items. A discussion of
8 our communication of our concerns to the Department of
9 Energy, including to the Secretary, which would be in
10 part a discussion of the draft letter that I circulated
11 to committee members last night. I'm thinking that
12 some of that needs to be rewritten in light of today's
13 conversation and so I'm -- which I'm clearly not going
14 to get done between now and 1:00.

15 And so -- but there are some very
16 specific issues of concern that were raised in comments
17 that I received, and I would like to discuss those as a
18 committee before I undertake the redrafting which I
19 will do on the plane on my way home today so that you
20 can have it in your e-mail tonight by midnight Eastern
21 time. And I -- so we will be discussing those issues
22 this afternoon, but not with a draft in front of us.

23 Second, we have a public comment period
24 and I would like to know, of the people in the room,
25 are there people who would like to address the

CARPENTER REPORTING, INC.
(303) 752-1200

1 committee this afternoon? This is not a commitment or
2 anything. I'm just trying to do a time. Okay. Anyone
3 else? No problem. Okay.

4 And future planning for the committee.
5 Those are the items that are the agenda. We have
6 until, I would say -- it sounds like 2:30 when the
7 first critical members of our committee are going to
8 start walking out the door. Jeanne, I know, will be
9 leaving now and you'll get the draft by e-mail in terms
10 of any issues that may be of concern to you.

11 How long do we need this afternoon, do
12 you think? Can we -- can we reconvene at 1 and finish
13 by 2:30, do you think, or should we reconvene earlier?

14 MR. BODEN: How about 12:45?

15 CHAIRWOMAN SPIELER: So it's now, I
16 think, five after, approximately.

17 DR. MARKOWITZ: I would also like to
18 spend five minutes talking about the success of having
19 a meeting here in Denver.

20 CHAIRWOMAN SPIELER: Okay. I think -- I
21 assumed that that would be a component of the future
22 where and when conversation.

23 MR. BODEN: Can I just ask one favor?
24 The 12:45, usually 12:45 means 5 to 1. So just a
25 request, let's all really try to be back here and start

CARPENTER REPORTING, INC.
(303) 752-1200

1 working at 12:45.

2 CHAIRWOMAN SPIELER: Yeah.

3 (There was a recess taken from 12:03
4 p.m. to 12:50 p.m.)

5 CHAIRWOMAN SPIELER: I will call this
6 meeting back to order.

7 Okay. Based upon Les's -- based on
8 Les's request that we get going as soon as -- as close
9 as possible to 12:45, but we didn't quite make 12:45 --

10 MR. BODEN: It was excellent.

11 CHAIRWOMAN SPIELER: Okay. Here's what
12 I have on our agenda for the next little bit over an
13 hour and a half that we have the meeting with all of
14 our members here.

15 First of all, discussion of
16 communication to the department in addition to the
17 recommendations that we've made as part of our meeting.

18 Second of all, a discussion about
19 follow-up to this meeting and I have this -- and other
20 things that are going to come up in the interim period
21 before any subsequent full committee meeting. And I
22 have on that -- that list at this point amending and
23 finalizing the minutes from our past meetings, possibly
24 giving to OWA a list of information that we would like
25 provided to us on a regular basis and what that would

CARPENTER REPORTING, INC.
(303) 752-1200

1 be, commenting on the DOE rules that would be
2 forthcoming on physician panels and possibly testifying
3 at the public hearing on those, the contractor insurer
4 request for public hearing and then where and when this
5 committee should meet again.

6 So that's a fairly lengthy list in and
7 of itself. We have our public comment period, as well,
8 this afternoon. Is there anything else?

9 Let me start this off with just a
10 discussion, at our last meeting, we agreed that we
11 would try to submit directly to the Secretary some of
12 our concerns and recommendations with regard to this
13 program and I think in the July 20th conference call, I
14 said that I would try to draft a letter that would come
15 from this committee to the Secretary, and, in fact, Don
16 got me started on that by starting a draft of that
17 letter. And you all saw the current draft as of
18 yesterday -- yesterday of that letter last night.

19 In view of this morning's discussions,
20 it seems like some of it would need to be rewritten and
21 I, therefore, did not feel it appropriate to bring it
22 in its current form to the meeting right now, but I
23 have several issues that came up in the comments that I
24 received from people that I would like committee input
25 on.

CARPENTER REPORTING, INC.
(303) 752-1200

1 And let me tell you now and let me tell
2 you why. As you know, I'll be leaving the country on
3 Sunday, hopefully for several months unless somebody
4 drags me back to the States. And I would like to have
5 this letter in the mail to the Secretary before I
6 leave, which creates a fairly -- or, should I say, an
7 extremely tight time frame. So it's my intention,
8 since I have a draft of this letter on my personal
9 computer, to, based upon our discussion -- the
10 discussion that we have now, rewrite the letter and
11 send it out to the members of this committee as soon as
12 I get home tonight, which will be about midnight. And
13 what I -- and I can do one more round on this on
14 Friday.

15 So what I would ask is that you all read
16 it tomorrow and get any concerns or comments back to me
17 immediately. But before I do that, let me just say
18 that there is -- there were essentially -- there were a
19 number of comments that essentially reflected the
20 consensus on various issues that we had this morning.
21 And I don't think I need to address those during the
22 meeting time.

23 There is significant disagreement on --
24 in the committee as to whether we should include the
25 section on commenting on the DOL rules. And the

CARPENTER REPORTING, INC.
(303) 752-1200

1 committee is very split on that, so I think we need to
2 resolve that.

3 In addition, Mark has some serious
4 concerns about some of the other components of what
5 we've been talking about, in particular with regard to
6 the operation of the physician panel under uniform
7 standards and the suggestion that defenses would be
8 waived in cases, and I think we need to decide how we
9 want to deal with that and with Mark's disagreements on
10 that issue.

11 And finally, I would like to add to the
12 letter some of the additional recommendations that we
13 agreed on this morning with regard to State MOU's and
14 refine the discussion of the physician panel standard
15 based upon the motion that was passed this morning.

16 So, first, should we be commenting on
17 the DOL rules at all in this letter, I think, is the
18 question that there's disagreement on the committee
19 about. And I'd like to hear from people pro and con.

20 MR. BODEN: I'll just start off with a
21 simple con, although I don't know how strongly I feel
22 about this. The con is that this is a letter to the
23 Secretary of Energy and not to the Secretary of Labor.
24 And as such, I'm not sure that this is an appropriate
25 place to vent such concerns.

CARPENTER REPORTING, INC.
(303) 752-1200

1 CHAIRWOMAN SPIELER: Don and Jim, I
2 think, are the strongest proponents of its inclusion
3 and so I think we should probably hear from them.

4 MR. ELLENBERGER: Let me start out by
5 saying, yes, the interim final rule was issued by the
6 Department of Labor and comments were to be submitted
7 to the Department of Labor, which some of the people in
8 this room have already done through their
9 organizations. I don't think it would be appropriate
10 for this committee to send comments to the Department
11 of Labor. It wouldn't be timely, No. 1.

12 No. 2, we are an advisory committee to
13 the Office of Worker Advocacy at the Department of
14 Energy. But having said that, the program exists
15 because of actions undertaken on behalf of the energy
16 department or its predecessors. And it is a program to
17 compensate employees of contractors or others of DOE.
18 And so there is an interest, I think, quite properly,
19 that falls under the pursue of this committee in terms
20 of -- of whether or not we -- we want to comment on the
21 rules as -- as issued by the Department of Labor.

22 And I think it's appropriate to do so in
23 the context that Emily has drafted. Making comments to
24 the Secretary of Energy, saying that we have feelings
25 about certain important issues in the Department of

CARPENTER REPORTING, INC.
(303) 752-1200

1 Labor's administration of their portion of this
2 program, and then state them in a very succinct and
3 abbreviated fashion, which I think was done.

4 I guess the bottom line is that it's --
5 it's appropriate for us to indicate to the Department
6 of Energy our viewpoints on any aspect of the Energy
7 Employees Occupational Illness Compensation Program and
8 clearly, the Department of Labor's regulations fall
9 within that.

10 MR. ELISBURG: I would say that in the
11 end, these are very interrelated programs. And that
12 the Department of Labor is a -- going to be
13 adjudicating claims of employees who were employed by
14 contractors working for the Secretary of Energy. But
15 these really are Energy Department people.

16 If it were not appropriate for the
17 Secretary of Energy by himself to comment on this kind
18 of procedure -- that is, if he should be keeping hands
19 off of what the -- the Department of Labor is doing
20 with the program, then I might say as an advisory
21 committee to the Secretary of Energy, we should stay
22 away from it. But in point of fact, he not only has
23 the opportunity to be involved in what the DOL's final
24 regulations are, I have every assumption that the
25 entire administration is going to be reviewing what

CARPENTER REPORTING, INC.
(303) 752-1200

1 those final rules are through OMB or passing it around
2 to the agencies, so he, as the Secretary of Energy,
3 will have an appropriate opportunity to have input into
4 some of those -- many of those issues.

5 Therefore, as an advisory committee to
6 the Secretary of Energy, I think it's very reasonable
7 to say, Look, there are some problems here that involve
8 your constituency and your -- your workers that,
9 really, you ought to be addressing in terms of how the
10 Department of Labor is administering the program.

11 Now, I think the comments we've
12 suggested are -- are relatively mild, but they go to
13 the heart of a number of issues that were being
14 discussed here in terms of procedural due process, in
15 terms of making sure that claimants, in fact, have what
16 they need to proceed and a lot of concern that -- that
17 there not be artificial time limits that screw up
18 somebody under changed circumstances.

19 That's my take on it.

20 CHAIRWOMAN SPIELER: Greg?

21 DR. WAGNER: Don, I hear what you're
22 saying. I also, on the other hand, am concerned about
23 muddying the waters and casting our nets so broadly
24 that we dilute the importance of any of the other
25 issues that we raised that are much more within the

CARPENTER REPORTING, INC.
(303) 752-1200

1 control and purview of the Secretary.

2 Basically, if I were the Secretary and
3 got an advisory committee telling me what they think
4 about a Department of Labor set of rules, I'd say,
5 Well, you know, what do you want me to do about it?
6 And it would, in some ways, I think, discount the
7 importance of the other communications that we wish to
8 have.

9 I think there are other routes and that,
10 as you suggest, when these rules are going to be turned
11 from whatever they are -- temporary interim emergency
12 regs into permanent ones, I do hope that they are
13 circulated among the different departments that have
14 interest and that the staff in the Office of Worker
15 Advocacy is going to be involved in their review and
16 comment.

17 That's what I would expect would happen
18 and I think they have heard our concerns about this.
19 So I really -- in order to not dilute out the value of
20 our recommendations on things specifically within the
21 control of the office of the Secretary, I would pretty
22 strongly suggest that we not broaden our discussion of
23 other inadequacies that we see.

24 CHAIRWOMAN SPIELER: Ricky?

25 MR. BLEA: I have to agree with what Don

CARPENTER REPORTING, INC.
(303) 752-1200

1 and James have said. And even though maybe the
2 Secretary would say, Well, what am I supposed to do, at
3 least he's informed of what we're thinking as a
4 committee. If, later on, an issue that we addressed
5 comes up to be a vocal point or point of argument
6 between DOE, let's say, and the Department of Labor,
7 he's already well aware that we have made a decision
8 saying, you know, there's a problem. This is how we
9 feel.

10 So I feel even if there's nothing that
11 the Secretary can do about it or his attitude would be,
12 What do you want me to do about it, he's still informed
13 of how the committee feels and we bring what we feel is
14 a problem to his attention. So I still say we need to
15 go forward with it.

16 CHAIRWOMAN SPIELER: Glenn.

17 MR. SHOR: I feel pretty strongly that
18 we should also send the comments with some possible
19 changes in the way that we word the comments to say
20 that this is being given as trying to help the
21 Secretary understand our concerns about this -- what's
22 going on without maybe -- I'm thinking of just this one
23 sentence of, We hope you will undertake to seek
24 correction, that we somehow take that out and say these
25 are our concerns. We know you will work with them as

CARPENTER REPORTING, INC.
(303) 752-1200

1 you may.

2 But I think our role of advisor to the
3 Secretary is a role that is -- that we've taken fairly
4 broadly and that this is advice that we should be
5 giving if we have a concern about one area of the
6 overall program.

7 CHAIRWOMAN SPIELER: Steve?

8 DR. MARKOWITZ: I'm trying to make a
9 point. In fact, in our charter, it says our first
10 activity is to provide advice on worker's compensation
11 policy issues of concern to the Department of Energy.
12 And this clearly falls within that, so I think we're
13 obligated, if we have strongly held views about this,
14 to express them in this letter.

15 MR. BURTON: I hardly ever agree with
16 Greg, but I -- it's a close call. I think it's really
17 a strategic question. I think our letter is one that's
18 going to annoy the Secretary of the Department of
19 Energy. It ought to annoy him because we're saying
20 some pretty critical things.

21 I don't want to give him an excuse to
22 write it off as people who are overreaching. And I
23 think this getting -- whether it's within our scope or
24 not, I think it gives him a reason to say, Oh, those
25 guys -- I knew they were off base and this just

CARPENTER REPORTING, INC.
(303) 752-1200

1 confirms it. So that's why I would be against it.

2 I certainly support everything that's in
3 here substantively, but I just think it just -- it
4 jeopardizes, I think, our chances of our messages on
5 the DOE program being taken seriously.

6 MR. OLSEN: That's what we discussed
7 this morning. That's my main concern.

8 CHAIRWOMAN SPIELER: I think there are
9 kind of two issues in front of us. One is
10 substantively -- the substantive positions that are
11 fairly inconsistent of the members of the committee.

12 And the second is that, by and large,
13 the rest of this letter is endorsed by consensus and so
14 the question is: Are we comfortable including a
15 component that isn't endorsed by consensus, whether it
16 be for strategic reasons or otherwise, in a letter that
17 we're otherwise essentially willing to send out?

18 And I look to the committee for guidance
19 on how we should do this. Glenn?

20 MR. SHOR: You mentioned at the
21 beginning that we're too late to get comments to the
22 Secretary of Labor on the regulations, but I wonder
23 whether we're too late to send a letter to the
24 Secretary of Labor and cc the Secretary of Energy that
25 these are our concerns with the program as it now

CARPENTER REPORTING, INC.
(303) 752-1200

1 stands and that we are -- we are an advisory committee
2 to the Department of Energy and not to the Department
3 of Labor, but it's come to our attention that these
4 things affect the program and that's why we're sending
5 the letter.

6 MR. ELISBURG: Well, you know, we really
7 talked about that at the get-go, Glenn, and the advice
8 we received from the staff, when we sought it out, was
9 that it would not be appropriate as an advisory
10 committee to the Department of Energy to directly
11 comment on these regulations as an advisory committee
12 to the -- it shouldn't specifically as an advisory go
13 directly to the Department of Labor, but that it would
14 certainly be appropriate if we wanted to let the
15 Secretary of Energy know of our views with respect to
16 what the Department of Labor was doing.

17 So that's what we've done. Now, I
18 appreciate the -- the points that are being made by
19 Greg and John and Mark, and frankly, I think that it is
20 a close call. And I think that, you know, you could
21 probably make an argument that -- or at least the
22 argument I might make if I were to go -- not
23 necessarily go the other way, but to forego the points
24 to the Department of Labor are that there have been
25 rather extensive comments by interested parties already

CARPENTER REPORTING, INC.
(303) 752-1200

1 on those regulations covering every one of the issues
2 we're covering so that it -- our comments are kind of
3 cumulative.

4 But I think that if you went that
5 route -- I'm not suggesting you should, but if you went
6 that route, I think it would behoove us to make clear
7 in some other fashion to our friends and colleagues
8 from the staff sitting out there that the advisory
9 committee is ticked at some of the things the Secretary
10 of Labor is doing so that they can let the Department
11 of Labor know where the -- where the group stands on
12 the substance.

13 And I think that's important because you
14 know that there has been a strong request to the
15 Department of Labor to appoint an advisory committee
16 under this statute. And the excuse that has really
17 come back as to why they did not appoint an advisory
18 committee to that program was that, Well, DOE already
19 has an advisory committee and they are doing the same
20 things anyway. You know, so -- so it's -- you know,
21 you sort of meet yourself coming through the door here.

22 I say that with, really, respect for the
23 point that you all are making about, you know, how much
24 ground do you want to cover here in order to get the
25 attention that we need and so forth. I just -- that's

CARPENTER REPORTING, INC.
(303) 752-1200

1 my observation about it.

2 CHAIRWOMAN SPIELER: Greg?

3 DR. WAGNER: I mean, I would really
4 concur that we seek another mechanism to express these
5 concerns and that we do focus on the strategic issues
6 of getting our primary concerns about DOE activities in
7 front of the Secretary.

8 CHAIRWOMAN SPIELER: Kathryn.

9 DR. MUELLER: I agree with Greg. I
10 think that it's not that we don't want to get some
11 message across to the DOL, but I think we can put it in
12 the same letter that what we're saying is a fundamental
13 problem that will not make this program work. It does
14 muddy it.

15 When I get letters like that and it's
16 got 30 laundry items in it, I lose track of what it is
17 that I want to focus on. I think it should be
18 separated out and commented on somehow separately.

19 MR. ELLENBERGER: I think it's a
20 question of tactics. We really haven't discussed the
21 components of our comments on the DOL regs, but
22 assuming that --

23 CHAIRWOMAN SPIELER: Actually, my
24 understanding from the comments I've gotten outside the
25 meeting is that it's not a substantive disagreement.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. ELLENBERGER: So then it's a
2 question of how we proceed tactically. And I agree
3 with Don that it's a close call. That the point John
4 made and Greg made is a valid one, as Kathryn has just
5 pointed out, and could confuse and, if not confuse,
6 confound the real import of what we're trying to say on
7 issues under the Office of Worker Advocacy.

8 So if we wanted to pursue an
9 alternative, one might be for us to simply take the
10 portion on the Department of Labor rules out of the
11 letter and, instead, make it a recommendation of the
12 committee.

13 We're going to be in a little bit of
14 quicksand because we don't have much leadership. You
15 have the Office of Worker Advocacy to convey to the
16 Department of Labor that the committee has some
17 strongly held viewpoints about the rules that we wanted
18 to convey to them. They weren't at this meeting.
19 Otherwise, we would convey it to them directly.

20 CHAIRWOMAN SPIELER: Another
21 alternative, perhaps, is that we send a separate letter
22 to the Acting Assistant Secretary, asking that these
23 issues, including the issues of the letter, be
24 communicated to DOL through both the working committees
25 and through the appropriate channels.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. ELISBURG: I agree with that.

2 MR. ELLENBERGER: That would be
3 acceptable to me.

4 MR. BURTON: Sounds good.

5 CHAIRWOMAN SPIELER: So, then, we've
6 kind of resolved that issue. It'll be removed from
7 this letter.

8 DR. MARKOWITZ: A separate letter goes
9 out to the Assistant Secretary?

10 CHAIRWOMAN SPIELER: I said the
11 Assistant Secretary because I thought sending the
12 Secretary two letters would be perhaps even worse than
13 including it in one. So -- I think that the best we
14 can do is ask that the concerns be communicated to DOL
15 from the interagency group.

16 MS. KIMPAN: Just a logistical question
17 since we're now talking about a document that none of
18 us have seen and is not in the record, can we have
19 access to it for people that might look at this later?
20 Is this part of the public record now?

21 CHAIRWOMAN SPIELER: No. It's not part
22 of the public record. It's something that's been
23 communicated to members of the committee. It's being
24 redrafted, so we don't have a copy of it. So it's not
25 to be included in the record of the meeting.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MS. KIMPAN: Sort of like the proposed
2 rules, only different.

3 CHAIRWOMAN SPIELER: Similar to proposed
4 rules.

5 MS. KIMPAN: It's almost public, but not
6 public enough for us. When it's appropriate, might we
7 see such a document?

8 CHAIRWOMAN SPIELER: Glenn suggests that
9 we pool all of our unseen documents in one place.

10 MR. BODEN: How about a trade? How
11 about we meet at midnight in a parking lot and we'll
12 hand you our letter and you hand your proposed --

13 MS. KIMPAN: Last seen on the Super
14 Shuttle. Plain brown paper.

15 MR. BURTON: You show me your rule and
16 I'll show you my letter.

17 MS. KIMPAN: That's it. Exactly.

18 CHAIRWOMAN SPIELER: But I can assure
19 you that there's -- there's a long cc list on the
20 letter, so ...

21 MS. KIMPAN: Oh, good.

22 CHAIRWOMAN SPIELER: Okay. So that
23 resolves the DOL comment question. And the -- the -- I
24 mean, the letter essentially reflects, as everyone who
25 has seen a prior draft knows, the recommendations that

CARPENTER REPORTING, INC.
(303) 752-1200

1 have come from this committee in the past with regard
2 to the functioning of the program, which -- which have
3 been discussed and proposed and, in some ways, perhaps,
4 we have -- the committee has felt not fully responded
5 to. Not at all because of the efforts of the staff of
6 OWA, but because of perhaps transitional issues in the
7 Department of Energy, so it seemed appropriate to the
8 committee, as we said in prior meetings, that we should
9 raise it at the highest levels.

10 So Mark has some concerns about -- I
11 think they go to some of the core of some of the issues
12 that have been before this committee in the past, I
13 guess, because we've discussed them a variety of times
14 in terms of our feeling that cases should go to the
15 physician panels, be uniformly reviewed, and then,
16 based on the physician panel recommendations, that
17 they -- the Department of Energy should pay the claims
18 without respect to the available defenses were they to
19 be raised in the litigation of claims within the State
20 arena.

21 And I -- I think you've expressed some
22 concerns about that and I wonder if you would like to
23 raise those with the committee as a whole.

24 MR. OLSEN: Sure. Let me address the
25 first one. Based upon the narrowing of this uniform

CARPENTER REPORTING, INC.
(303) 752-1200

1 standard that we discussed earlier, I don't have a
2 problem with that.

3 CHAIRWOMAN SPIELER: And the
4 communication will fully reflect the discussion this
5 morning.

6 MR. OLSEN: The medical causation, I
7 don't think is at all inconsistent with the statute,
8 actually, but that shouldn't preempt State law, legal
9 causation issues that I don't think the statute really
10 addresses. And see, that's my bottom line concern.
11 Make sure that -- that whatever we recommend --
12 whatever the committee recommends to the Department of
13 Energy and whatever the Department of Energy does or
14 any Federal agency involved with this does in carrying
15 out the legislation is true to the legislation.

16 And I don't see anything in the
17 legislation -- in fact, quite to the contrary -- where
18 it discusses the system of State law. I don't think
19 the legislation at all contemplated a waiver of those
20 State law defenses. And if -- if -- if that's the
21 outcome we want, I think that's something for the
22 legislative branch to do, not for the executive branch
23 and rule maker to do.

24 CHAIRWOMAN SPIELER: Discussion?
25 Response?

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. BODEN: It seems to me that there
2 are two separate issues here. And one has to do with
3 sort of legislative intent, and I don't know that we're
4 prepared to discuss that at this point. I'm certainly
5 not prepared to sort of look at it as if we were a
6 Federal court trying to figure out what the intent of
7 the -- of the act was.

8 There's another set of questions, I
9 think, that are practical questions. Now, I'm putting
10 myself, Mark, in your shoes and your shoes may not fit
11 me at all or my feet may not fit in your shoes. But,
12 certainly, one concern is that -- one practical concern
13 that I would have were I working for or representing a
14 contractor is that we are essentially proposing that
15 contractors pay claims without -- we've talked about
16 proposing that contractors would pay claims and not
17 raise defenses, but that they also would be held
18 harmless for paying those claims by contracting and
19 payment mechanisms to be worked out with the DOE.

20 I guess my concern would be if I were in
21 a contractor's shoes, that half of that bargain would
22 be filled in the actual implementation and that I would
23 end up paying, but not being held harmless. And --

24 MR. OLSEN: That's a risk to
25 contractors.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. BODEN: That's exactly what I'm
2 saying. And so I guess -- I mean, I'm looking at this
3 from a practical perspective. And I'm less certain
4 about what the intent of the law was, although I think
5 I know what the intent was of the people in the DOE who
6 started this process going.

7 So I -- I don't know how to -- how to
8 discuss those two things together or separately, but it
9 seems to me that they are both issues.

10 CHAIRWOMAN SPIELER: Don.

11 MR. ELISBURG: Emily, I -- I would
12 have -- and I still think that what was intended was
13 once the doctors sign off, the Department of Energy
14 would direct the contractor to pay and the issues of
15 defenses and so forth would never come up, just as if a
16 contractor decides that somebody has been hurt and pays
17 the claim, many of the defenses and issues and
18 compensability issues just never come up on a claim
19 once you decide to voluntarily pay.

20 So, you know, there's nothing wrong with
21 that. And the nexus for doing it was a determination
22 by the Department of Energy or its NIOSH panel,
23 physicians' panel that what happened to this person was
24 work-related. That would be sufficient to pay, forget
25 about all the nuances in the individual states. You

CARPENTER REPORTING, INC.
(303) 752-1200

1 never have to reach it. That's my sense.

2 Now, on the other hand, I'm a little
3 concerned about even addressing the second part of it.
4 I mean, we now have to sort of settle how we would like
5 what the physician panel responsibility to be and I
6 think that's important to get across to the Secretary
7 of Energy.

8 The second part about all the nuances
9 with the State law, I'm wondering whether we are able
10 to appropriately address it because we don't know
11 what's in the proposed rule. And I'm a little
12 concerned that -- the way Steve Cary was describing it
13 a bit to us today is that the rule is going to talk
14 about on the one hand and on the other hand and you
15 could do it this way or you could do it that way and
16 what do you folks think.

17 And so I'm a little concerned about
18 deciding to tell the Secretary of Energy what we think
19 when we don't know what question is being asked.

20 You know, the first seven months of this
21 exercise were a bit more -- more precise and you could
22 go A or B, but I'm not sure as the lawyers -- God bless
23 them -- have gotten into the process, that we're still
24 dealing with A or B. We may be dealing with another
25 alphabet here and a lot of other dimensions and issues

CARPENTER REPORTING, INC.
(303) 752-1200

1 as this thing is going through the process.

2 That leaves us perhaps commenting not
3 quite with all the full deck. I just throw that out as
4 a concern I have.

5 MR. BURTON: Well, just as a logistical
6 matter -- let me see if I understand the implications
7 of your remark. Now, Emily is obviously trying to get
8 this letter out this week.

9 CHAIRWOMAN SPIELER: Really, it should
10 have gone before now, so ...

11 MR. BURTON: I understand. On the other
12 hand, if the rules are going to be out in another week,
13 I guess the question -- I read Don as saying there's
14 a -- it doesn't make sense to hold those letters until
15 the regs are out.

16 MR. ELISBURG: I'm not suggesting we
17 send the letter truncated a bit on that issue and then
18 separately address that issue having to do with the
19 States' rights when that issue has been at least
20 fleshed out in the proposed rule.

21 I mean, we were sitting, writing this
22 letter with what we perceived to be essentially the
23 draft that DOE was going forward with -- that was the
24 basis for the Laura Welch's letter. That's the basis
25 for much of what our concerns are. What we're being

CARPENTER REPORTING, INC.
(303) 752-1200

1 told now is don't bet the rent on that issue. That it
2 may be handled differently.

3 MR. BODEN: Can I ask a question about
4 the proposed rule? Does the proposed rule deal with
5 post-physician panel decision making in any way?

6 MR. FALCO: I think it -- basically, it
7 has some language on review -- on an appeals process.

8 MS. KIMPAN: It definitely deals with
9 these parameters of States and asks for comment on
10 which and what criteria ought to be considered,
11 including as relates to the MOU, as relates to our
12 procedures.

13 CHAIRWOMAN SPIELER: Here's my concern
14 and I -- I'm kind of logistically flummoxed, quite
15 frankly. This rule is going to come out and there's
16 going to be a 30-day period to comment on it. The
17 advisory committee -- which I think the way this
18 usually works is the advisory committee isn't in once
19 there's a written proposal, but, rather, before there's
20 a written proposal in the development of the concepts.

21 And clearly, that hasn't happened here.
22 And so there -- we have a number of options because
23 we're not going to meet during -- during the 30-day
24 comment period, which makes it difficult for the
25 committee to hash out any areas of potential

CARPENTER REPORTING, INC.
(303) 752-1200

1 disagreement. So I was actually -- as I was working on
2 redrafting this letter from 5 to 8 this morning --
3 didn't make it -- was beginning to conceptualize it as
4 this is the input we would have given you if you had
5 asked us for it at the right point in the process.

6 That is, we actually have strong
7 feelings about this and advice to offer and we would
8 like it considered. And I think at this point, I would
9 add to the letter "and will be offering specific
10 comments on the specific rule."

11 So the question, I guess, that's -- and
12 in most regards, I think the letter is appropriate to
13 that task. The question that's before us is this very
14 specific and difficult one of -- and I think I would
15 formulate it this way: DOE as essentially the
16 employer, although not necessarily nominally the
17 employer, financially the employer in terms of the
18 payment of these claims, has to make a decision as the
19 employer as to how to deal with claims that, in some
20 instances, may push the envelope on what would be a
21 litigated result and in other instances wouldn't.

22 And I think employers make that -- those
23 decisions or TPA's for insurers make those decisions
24 every day in states. Should I litigate this case. The
25 guy filed it two days after the statute of limitations,

CARPENTER REPORTING, INC.
(303) 752-1200

1 but he's been a good worker. I could waive the statute
2 of limitations defense in this claim because I want him
3 to continue to be a good worker.

4 You know, people make those decisions
5 all the time in the State worker's comp systems and
6 they aren't apparent because they are not litigated and
7 so there's no sort of public decision or logic that's
8 out there to be reviewed. They are made on a case-by-
9 case individualized basis based on personal
10 relationships and firm norms. And I think it's
11 entirely appropriate for this committee to say the firm
12 norms for DOE should be X. And if we think they should
13 be -- they should consider State law, that would be one
14 thing. Or if we think they should consider some
15 aspects of State law, not others, that would be
16 appropriate. Or if we think that they -- that DOE,
17 because of the history -- you can tell where I'm
18 going -- of failure to pay these claims should maybe
19 establish a new firm law that's more liberal than
20 usual, that would be an alternative.

21 And I think it's an -- I personally
22 think it would be appropriate to take a position on
23 that large issue in this letter, even without seeing
24 what the specific questions are that are being raised.
25 And it can be formulated that way in the letter with,

CARPENTER REPORTING, INC.
(303) 752-1200

1 you know, the -- and we'll be offering you specific
2 comments to the extent that the committee can formulate
3 them between meetings to the rules that you -- you
4 provided. But I -- so that's sort of where I am about
5 this.

6 Thoughts? Should I take a stab at it?
7 Send it out? Do you all want to boot up tomorrow
8 morning and stare at what I've come up with?

9 MR. BURTON: Let me go back to -- kind
10 of react to something Mark said. I think this is
11 probably an issue a bunch of us are struggling with.
12 On the one hand, I don't think the intent of this
13 legislation was to overtly override State law. In the
14 preemption sense, that could have been done if they
15 wanted to do that. And I think we need to -- we
16 need -- we probably need to say that. We're not
17 alleging that their State law is preempted to the
18 extent it's consistent with whatever.

19 On the other hand, what I hear you
20 saying is that once these determinations are made by
21 the medical panel, that employers, carriers retain
22 their rights, okay, which is -- which I agree with,
23 then they are going to exercise them.

24 The problem with that -- that's
25 implicit, I guess, in what you were saying. If that's

CARPENTER REPORTING, INC.
(303) 752-1200

1 what's going to happen, then it seems to me that we're
2 going to end up essentially replaying cases that have
3 already gone through the States and have been turned
4 down, we're -- once people who get their expectations
5 up that this is something different and then they are
6 going to lose again.

7 And it didn't seem to me that could have
8 been the intent or should -- it's logically to me the
9 intent. It seems to me the intermediate thing is we're
10 going to go to people like Mark and say, Look, we know
11 you've got a right to fight this claim, but we
12 understand the spirit of the law being that you won't
13 fight it because these are people who have legitimate
14 work-related conditions as certified by these panels.

15 Now, if we need to -- in order to get
16 that position across to say we, as a committee,
17 recognize that this has got to be done in a way that
18 doesn't adversely affect insurers or employers, I'm
19 even prepared to couple this -- this is back to kind of
20 what Les said -- if what's necessary to get cooperation
21 here is explicit reimbursement for carriers and
22 employers as a way to make this thing work in a way
23 that's consistent with the intent and doesn't adversely
24 affect employers, then I am prepared to endorse that,
25 as well.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. OLSEN: My main concern is, really,
2 we've got a pretty vague statute and I'm wanting to
3 avoid inconsistent outcomes.

4 Let's take -- let's take my site, for
5 example. Under the statute, once a physicians' panel
6 makes a determination of causation, then it makes a
7 recommendation to the Secretary of Energy to pay this
8 claim or there's causation and, therefore, do your
9 thing and pay it.

10 If the Secretary of Energy decides it
11 wants to direct the contractor to pay it, then, at
12 least as far as my contractor goes, if he directs us to
13 pay it, we're not going to fight it because, if we do,
14 the costs are unallowable. We're not going to incur
15 inallowable costs, pure and simple.

16 You're not going to be able to do
17 that -- contrast that situation with the situation with
18 Rocky Flats where you've got real insurance. The
19 Secretary of Energy is not going to tell that carrier
20 pay it. Otherwise -- or not going to be able to tell
21 Kaiser Hill to direct its insurer to pay it because if
22 you do, then Kaiser Hill is put in a position of either
23 breaching a contract with the Department of Energy or
24 incurring a claim with its carrier that you know darn
25 well they are going to get sued. Pure and simple, they

CARPENTER REPORTING, INC.
(303) 752-1200

259

4 MR. ELISBURG: Not if they make Kaiser
5 Hill whole. The whole --

6 MR. OLSEN: So --

7 CHAIRWOMAN SPIELER: They seem to think
8 it was possible to pay the claim outside the contract
9 of the carrier.

10 MR. OLSEN: That's what it's going to
11 have to be. But then you've got somebody at the
12 Department of Energy, whether it's the procurement
13 executive, DOE headquarters, or individual contracting
14 officers at the various field levels putting their
15 warrant on the line, going on record as saying, Yep,
16 this is an appropriate thing to do with appropriated
17 funds.

18 MR. ELISBURG: Absolutely.

19 MR. OLSEN: If they are prepared to do
20 that, I don't really care.

21 MR. ELISBURG: I think that's got to
22 flow.

23 CHAIRWOMAN SPIELER: Which is what we've
24 been saying all along.

25 MR. OLSEN: But I think you're going to

CARPENTER REPORTING, INC.
(303) 752-1200

1 have some nervous contracting officers.

2 MR. ELISBURG: It just seems to me that
3 we have as a subcommittee -- and the whole point of the
4 contract subcommittee was to try to lay out those
5 caveats, those concerns. And that's why we've said
6 that order 350 -- whatever it is -- standing by itself,
7 in our general view of the procurement process, doesn't
8 make you, as contractors, out of your comfort zone
9 because of all these nuances, but I think that if -- it
10 seems to me that -- that the kinds of caveats we're
11 talking about are appropriate to include in the letter
12 making clear that, you know, if the Department of
13 Energy says pay it, coupled with that is a
14 responsibility to make sure that the contractors are
15 not hurt with respect to their ongoing obligations in
16 business.

17 MR. OLSEN: So the bottom line is you're
18 going to have GAO sniffing around, second-guessing, as
19 they typically do, DOE decision making.

20 The third area of concern is contrary to
21 our cost reimbursement contract with the Department of
22 Energy, historically, our subcontracts -- as you
23 recall, subcontractor employees fall within the
24 definition of DOE contractor employee within the
25 statute. Historically, almost 100 percent have been

CARPENTER REPORTING, INC.
(303) 752-1200

1 fixed price contracts and the cost of their worker's
2 comp program has been built into the price of that
3 subcontract.

4 Well, if we now -- if the M&O
5 contractor, cost reimbursement contractor is now going
6 to be paying the claims of subcontractors as opposed to
7 telling the subcontractor employees, No, you go back to
8 your employers's comp carrier, you don't come to us,
9 that's another area where GAO could be second-guessing
10 DOE of creating a public risk when the legislation is
11 not sufficiently clear to authorize them to do so.

12 MR. ELISBURG: What's the consequence?
13 The consequence is GAO says, Don't do it again.
14 Congress either says, Keep doing it or don't do it.
15 When the -- when the -- when the agency directs you to
16 do something, you, as a contractor, do it. You're off
17 the hook, regardless of what GAO says.

18 MR. OLSEN: We're clearly off the hook.

19 MR. ELISBURG: Down the road -- if, down
20 the road, this whole house of cards collapses, it
21 collapses on the Secretary of Energy; not on the
22 contractor.

23 MR. OLSEN: Or some people who signed
24 off on the dotted line saying that. So it has career-
25 limiting implications.

CARPENTER REPORTING, INC.
(303) 752-1200

1 CHAIRWOMAN SPIELER: Here, I --

2 MR. OLSEN: It could have.

3 CHAIRWOMAN SPIELER: This is kind of an
4 interesting conversation because the contractor
5 subcommittee has come up with a fairly complex proposal
6 on a variety of issues around procurement, but
7 including a pilot proposal. The response we got back
8 from procurement from OWA is we don't need any of this
9 because we don't need a pilot, when, in fact, large
10 components of the original proposal were an attempt to
11 raise some of the issues that Mark is raising now.

12 And I think maybe the subcommittee needs
13 to reraise the issues that were in that original
14 document separately, saying, Okay. Don't do the pilot,
15 but what about these five other issues that were in
16 that draft that have never been addressed and remain
17 issues.

18 To go back to this issue of this
19 particular letter, is there any guidance from the --

20 MR. ELISBURG: Perhaps you can, in this
21 letter, without talking about defenses and so forth,
22 talk about the fact that the triggering of the -- of
23 the payment through the medical determination creates a
24 number of procurement issues that seriously need to be
25 addressed because of the complexity of Department of

CARPENTER REPORTING, INC.
(303) 752-1200

1 Energy's contracting and the long history and
2 relationships with subcontractors, dah-dah-dah-dah-dah.
3 And that it is important for the -- the integrity of
4 what they are trying to do that these issues be
5 resolved so as to protect the contractors who are being
6 directed to pay claims that may have been incurred long
7 before they ever showed up.

8 MR. SHOR: I think we have gone halfway
9 there in -- in the --

10 MR. ELISBURG: That's better than it
11 usually is.

12 MR. SHOR: In the previous page to where
13 we were talking about the physician panels, we are
14 talking about the contractor reimbursement procurement
15 issues and we do make those points. We just haven't
16 made them again with respect to the physician panels.

17 I think we just have to add something in
18 there to say look back to what we just told you. These
19 are complicated contractor things. What you need is
20 more money in the contracts in order to pay these
21 claims.

22 MR. OLSEN: More new money.

23 MR. SHOR: More new money. I think
24 you're right, because you can't hold somebody harmless
25 if you are expecting them to do what they were

CARPENTER REPORTING, INC.
(303) 752-1200

1 expecting to do before and something else.

2 CHAIRWOMAN SPIELER: Or getting it.

3 MR. SHOR: So I think -- we do say those
4 words maybe somewhat vaguely in the previous section.
5 So linking those two, I think we can make this thing
6 work.

7 CHAIRWOMAN SPIELER: Okay. Then I think
8 I have the sense of the body on this and -- and I will
9 go back to my draft.

10 MR. BODEN: Trying to think about this,
11 forgetting for a moment that I'm a quizzical scientist,
12 one problem that I see here is my understanding of DOE
13 is that it is not a monolithic agency and that the
14 different parts of this agency act with a lot of
15 independence from each other and that part of what
16 we're trying to construct here is something that
17 depends on the coordinated activity of parts of the
18 agency that don't normally coordinate with each other,
19 to say the least.

20 And that for this to be successful, it
21 really requires, at a minimum, strong, central
22 commitment to doing certain things. And it seems to me
23 that a letter to the Secretary ought to focus on
24 principles and a rather small number of them. One of
25 the things that concerned me about the letter overall

CARPENTER REPORTING, INC.
(303) 752-1200

1 is it's longer than any letter that a Secretary
2 normally reads. And that if we focused on the
3 principles and said that, Well, this committee does
4 have some specific ideas, but we don't really think
5 it's appropriate to bother you with them and that the
6 principles are, you know, are -- maybe they are more
7 than these, A, that if a physician panel says that
8 somebody has a work -- an illness that was caused by
9 their employment at DOE, that, generally speaking, that
10 it should be highly probable that that person gets paid
11 through the State worker's compensation system.

12 And that B, that in this process, both
13 people who have relationships with current contractors
14 and people who don't have such relationships, that
15 mechanisms need to be worked out for those people to be
16 treated similarly with regard to once they have had
17 their physician panel approval.

18 And that, C, that current contractors be
19 held harmless in this process, both because it's the
20 right thing to do and because it would be hard to see
21 why they would cooperate with a process that was going
22 to damage them.

23 And that, you know, then the issue is
24 that -- that, really, the Department of Energy has to
25 come up with direction and we would be happy to help

CARPENTER REPORTING, INC.
(303) 752-1200

1 with the details, et cetera, et cetera. Something sort
2 of shorter and more to the point.

3 MR. BURTON: It could be a short letter,
4 obviously, with an appendix that includes all the other
5 stuff that we were just --

6 CHAIRWOMAN SPIELER: I was just thinking
7 about that.

8 MR. BODEN: An appendix that he won't
9 read. It's going to get passed on to somebody else.

10 MR. BURTON: One-page executive summary.

11 CHAIRWOMAN SPIELER: Right.

12 MR. OLSEN: This kind of letter might
13 avoid the irritation factor that John was talking
14 about.

15 CHAIRWOMAN SPIELER: Okay. I think I
16 have plenty of guidance. Watch your e-mail. It shall
17 be either there tonight or, if I'm tired, early
18 tomorrow with a very specific time line.

19 Okay. I'm going to move this meeting
20 along. I think that we owe it to our guests to open
21 our public comment period and hear from the people who
22 are here.

23 So if there's anyone who would like to
24 offer public comment, if you could come up to the mic
25 up front.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. KOHLER: My name is Roman Kohler, a
2 resident here in Westminster. I took retirement from
3 Rocky Flats after 27 years of work out there.

4 I represent the Homesteaders, which are
5 the retiree organization in Rocky Flats. I do a
6 newsletter for these retirees. It goes out to about
7 1500 dues-paying members throughout the United States
8 and including Canada. You know, retirees tend to move
9 around. We've got some in Sun City, Arizona, Florida,
10 and little communities that I can't even pronounce the
11 names.

12 I have to say that my newsletter is
13 probably one of the few communications they have with
14 things that are happening out there at the plant and,
15 of course, now lately, it's definitions and
16 explanations about the Compensation Act.

17 I'd like to make a comment that --
18 first, to commend the committee on their
19 professionalism and the way they have been conducting
20 business today. Madam Chairwoman, your attention to
21 parliamentary procedure is very good. Very good.

22 I'd like to encourage the committee to
23 either recommend or encourage DOE and the Department of
24 Labor to expedite the CBD claims cases. People with
25 CBD, their work at the defense plants are the only

CARPENTER REPORTING, INC.
(303) 752-1200

1 place they could have received that exposure. These
2 cases are cut and dried. They don't have to be
3 evaluated, you know, to an extent by a physicians'
4 panel. These cases should be expedited and people
5 should receive their compensation. It would also be a
6 big advantage and help to the Resource Centers to use
7 those payoffs as a public relations effort to -- so
8 that they can gain the trust of the past workers so
9 that other individuals who are contemplating filing
10 claims would then be able to see the honesty in the
11 program and then they will come forward.

12 I think that would be a big help. I'd
13 certainly recommend that you make that type of a
14 recommendation to the agencies.

15 I also agree with your thoughts about
16 the Department of Labor to send a postcard in response
17 that when a claim has been filed that here is some
18 feedback to the claimant. Understanding that these
19 claimants, many of them are sick, elderly. Of course,
20 some of the surviving spouses or dependents have only
21 minimal background knowledge about the work and the
22 exposures. Therefore, that type of feedback is
23 extremely important to them. So I'd encourage the
24 Department of Labor to do that.

25 I think that the dose reconstruction is

CARPENTER REPORTING, INC.
(303) 752-1200

1 extremely important. You know, exact details of how
2 exposure was incurred is probably not necessarily of
3 the same importance as the fact that, you know, workers
4 moved around and they received exposure. That's what's
5 important. That's what may have contributed to the
6 cause of their illnesses. Exact details of how much
7 time they spent at one building or another may not be
8 of all that much importance. The fact is that they did
9 receive exposure. That is important.

10 Also, that the records that were kept,
11 you know, 30, 40 years ago are very haphazard at this
12 time. I worked in many areas out there. I received,
13 you know, dose reports either monthly or quarterly or
14 annually, depending on where I was working at the time
15 and it barely showed I received a dose. I was within,
16 you know, accepted limits. Hey, I kept receiving
17 these, you know -- you throw them away. They were
18 certain mills of information. There was no intention
19 at that time that I should save these, you know,
20 forever.

21 To now go back and try and, you know,
22 find that information is extremely difficult or almost
23 impossible for the worker themselves. I think it's --
24 you know, I guess it's going to be on the
25 responsibility of the Department of Energy to try and

CARPENTER REPORTING, INC.
(303) 752-1200

1 recover or reclaim this type of information. The dose
2 reconstruction, of course, would be important in that
3 area.

4 I also think the committee can make a
5 recommendation to the Department of Energy to encourage
6 contractors to maintain the present health benefits.
7 That was brought up last night, also. I'm sure, as you
8 know, that the insurance companies are all making
9 proposals to increase rates and contractors all around
10 the United States are, you know, of course, expecting
11 to pass those increases on to the workers. I guess
12 active workers who are receiving pay and can receive,
13 you know, yearly increases in pay that can somehow
14 offset that, but for those of us who are retirees on
15 fixed incomes, we have no way of compensating for that.
16 So it is important that contractors maintain health
17 benefits for past workers.

18 The Compensation Act certainly
19 compensates people who have been made ill. The DOE has
20 admitted that people have been, you know, made ill
21 because of their exposure in their work. But the
22 Compensation Act is narrow, actually, for cancers or
23 for CBD. Yet, people are ill from many other
24 exposures, chemical exposures, and other things that
25 are not included in that Compensation Act.

CARPENTER REPORTING, INC.
(303) 752-1200

1 Therefore, the health benefits are the
2 only way they have to, you know, compensate for their
3 illnesses. So those health benefits are extremely
4 important and they should be maintained.

5 I guess that's really all I have. I'll
6 accept any questions.

7 CHAIRWOMAN SPIELER: Questions? Maybe
8 you should put some of us on your mailing list.

9 MR. BLEA: I have a question. A quick
10 question. On your mailing that you do to your 1500
11 people, what happens -- has there been any feedback to
12 you of what they think about this program?

13 MR. KOHLER: I think they are very
14 apprehensive about it and as brought out, you know,
15 earlier, people certainly do have a distrust of the
16 Government on, you know, whether they are actually
17 going to receive it or not. You know, we've heard
18 comments from people saying, Well, maybe my heirs will
19 receive that. It's going to take that long.

20 In the past -- what have they got to
21 base that on? In the past, if someone became ill, the
22 contractor denied worker's compensation. That was
23 their first, you know, action. You ask to -- say I was
24 made ill here. Can I get compensation, worker's comp.
25 And the first answer from the insurance provider was,

CARPENTER REPORTING, INC.
(303) 752-1200

1 No, you're denied.

2 And many of our workers here at Rocky
3 Flats, even though they had chronic beryllium disease,
4 had to get a lawyer and file a legal complaint, go to
5 court before the company and the insurer would actually
6 accept and approve a worker's comp claim.

7 So that's what they are basing their
8 knowledge on is past practices.

9 MR. BLEA: Okay.

10 MR. KOHLER: And, you know, that's the
11 type of feedback I have received. And I try to put in
12 the newsletter the accurate information I receive here
13 or other places.

14 And one thing I might bring out -- I
15 think it was very informative -- people feel, as was
16 brought out earlier, when they go to the Resource
17 Center, that they are filing a claim. Everything we've
18 read and have heard of is that when you go to the
19 Resource Center, you are filing a claim.

20 Well, this morning, I hear that's not
21 the truth. You're filing a file to file a claim. You
22 know, DOE -- or DOL is the one that's actually starting
23 the claim. So that's information I can pass on that I
24 think is important. It needs to be disseminated.

25 DR. WAGNER: Have you done any

CARPENTER REPORTING, INC.
(303) 752-1200

1 interviews with people in the Resource Center in some
2 way trying to gather information that you could
3 disseminate through your newsletter?

4 MR. KOHLER: Yes, I have. I have an
5 article going in my next newsletter which is coming out
6 next month and that has been reviewed by Ray Malito. I
7 know all the people there.

8 DR. WAGNER: I figured you did.

9 MR. KOHLER: I worked with them for many
10 years. I think it's -- it's very encouraging, as you
11 heard from the people who have filed claims, you
12 know -- they are very happy with the Resource Center,
13 because, you know, the case workers are their fellow
14 workers: People who understand their plight, their
15 illnesses, and are able to fill out the forms very
16 accurately because they have an understanding of all
17 the terminology and where the people worked and what
18 actions were carried on in each building.

19 Any others?

20 CHAIRWOMAN SPIELER: Thank you. We
21 really appreciate it. Is there anyone else who wanted
22 to offer comments to the committee this afternoon?
23 I'll ask one more time because I know that we did this
24 a little bit earlier than was on the agenda before we
25 quit.

CARPENTER REPORTING, INC.
(303) 752-1200

1 For the moment, I'm going to close the
2 public comment period and take us back to the list of
3 items that I was running down before that I think we
4 need to resolve before another meeting.

5 First of all, and perhaps most
6 importantly, the physician panel rules are going to be
7 issued and the 30-day window for public comments and
8 the public hearing are all going to happen between this
9 meeting and when this committee is going to reconvene.
10 And for the majority of that period, I will probably be
11 completely out of touch.

12 So I would like to ask Steve Markowitz
13 if he is willing to take the lead for the committee, as
14 the chairman of the subcommittee on the physician
15 panels, in formulating and responding to the proposed
16 rules. If you're willing to do that.

17 DR. MARKOWITZ: Meaning what? What's --
18 what product are we interested in?

19 CHAIRWOMAN SPIELER: Well, I think there
20 are probably two, but I think this is up for grabs.
21 One is that I think that it would be certainly
22 appropriate for you and other members of this committee
23 to appear at any public hearing and offer comments on
24 behalf of the subcommittee and the advisory committee,
25 assuming that you had the opportunity to circulate

CARPENTER REPORTING, INC.
(303) 752-1200

1 something.

2 And the second would be to -- for the
3 committee in the committee's name, through you, to
4 provide written comments to DOE about any concerns,
5 whether they be large or section-by-section concerns
6 about -- and particularly to respond to the questions
7 that apparently are going to be included in this
8 proposed rule.

9 And I -- I think that -- my impression
10 is that -- I may be way off base, but my impression is
11 a lot of these questions -- the answers to a lot of
12 these questions are things that we've already
13 discussed.

14 DR. MARKOWITZ: Meaning that I would
15 draft a comment and send it to everybody for comment?

16 CHAIRWOMAN SPIELER: Or get someone else
17 to draft it. But, yes, it would be your monkey.

18 DR. MARKOWITZ: And a -- a simple
19 majority of yeses --

20 CHAIRWOMAN SPIELER: Well, I think
21 that's something that we need to resolve explicitly
22 today.

23 DR. MARKOWITZ: Yeah, I can do that.
24 You know, as long as there's a workable process within
25 that time period.

CARPENTER REPORTING, INC.
(303) 752-1200

1 CHAIRWOMAN SPIELER: Yeah. One option
2 would be also for us to ask your subcommittee to take
3 the primary lead so that, you know, if your
4 subcommittee can come up with comments that are -- that
5 you have a kind of consensus around, my guess is that
6 the likelihood of others signing off on it would be
7 higher.

8 DR. MARKOWITZ: The hearing, I think, is
9 scheduled for the same day as Yom Kippur, which means
10 that I wouldn't be there.

11 DR. WAGNER: The 27th.

12 DR. MARKOWITZ: September 27th is Yom
13 Kippur.

14 MR. EAGAN: Due to the conflict with the
15 Jewish holiday, the date has been tentatively
16 rescheduled for the 24th of September.

17 DR. MARKOWITZ: Laura Welch also lives
18 here.

19 CHAIRWOMAN SPIELER: There.

20 DR. MARKOWITZ: She lives this way. She
21 probably would be willing to go if I can't.

22 CHAIRWOMAN SPIELER: Is that process one
23 that the rest of the committee is satisfied with?
24 Okay.

25 DR. MUELLER: I just want to suggest

CARPENTER REPORTING, INC.
(303) 752-1200

1 maybe what we could do is have a subcommittee
2 teleconference that was open to all the other committee
3 members and anybody else who was really interested
4 could be in that discussion before you write the
5 commentary on the rule so people could have their
6 comments in before you draft it.

7 DR. MARKOWITZ: But if you think about
8 the time frame, we have to do that the next week.

9 DR. MUELLER: We would.

10 DR. MARKOWITZ: Do we need additional
11 comments? I can't write and draft anything --

12 CHAIRWOMAN SPIELER: Right. We can't
13 really figure this out till it's out.

14 DR. MARKOWITZ: I don't think there's
15 enough time to see the draft when it comes out, then to
16 give people a week to read it, have a conference call,
17 then I draft something, and then get the approval of
18 everybody by September 24th.

19 DR. MUELLER: Okay. Draft it first
20 then. I just think it's a good idea to have a
21 telephone conference. I think --

22 DR. MARKOWITZ: Why don't I draft it
23 when it comes out and as soon as it comes out, schedule
24 a conference call.

25 CHAIRWOMAN SPIELER: Okay. And I think

CARPENTER REPORTING, INC.
(303) 752-1200

1 that the record from this meeting should clearly
2 reflect that we have agreed on this process so that
3 comments can be offered on behalf of this committee in
4 this intervening period and that the comments that will
5 be offered will be offered on behalf of the committee
6 as a whole, so that the fact that there is not another
7 full physical meeting of this committee does not stand
8 in the way of our offering comments on those rules.

9 Okay. John, is there anything else you
10 need with regard to the contractor insurer subcommittee
11 public hearing? You've agreed that you will be the
12 point person for this committee on convening that and
13 running it.

14 MR. BURTON: I don't think so. I guess
15 the plan would be to do that probably in October.
16 Realistically, in September, we're not going to have
17 any time before that. So that would be the target
18 date. I'll have to work and see if we can find a date.
19 I visualize a one-day hearing, probably followed by a
20 meeting of the subcommittee and anybody else from the
21 whole committee who is there. So a day and a half or
22 something like that. I'll have to think about that.

23 CHAIRWOMAN SPIELER: But, again, the
24 committee is designating John Burton to act on our
25 behalf in the convening of this public hearing and

CARPENTER REPORTING, INC.
(303) 752-1200

1 organizing of it and to work with the OWA staff to do
2 that.

3 There have been several issues that have
4 come up with regard to getting information from OWA to
5 the WAC over the next coming period and I would just
6 like to reiterate some of this and ask if there are
7 additional -- if there's additional information that
8 should be provided to this -- to the members of this
9 committee.

10 First of all, that as soon as the rule
11 is available, it will be sent to us, together with,
12 obviously, the preamble and, also, the estimates and
13 assumptions with regard to the DOE estimates of how
14 much this program is going to cost -- Subtitle D of
15 this program is going to cost. Okay. Judy is nodding.

16 Second of all, I think that there were
17 various discussions about internal reporting on claims
18 filing and claims processing and there was some
19 discussion about providing copies of that reporting on
20 some kind of regular basis to the committee.

21 The Assistant Secretary offered weekly
22 reports, which I'm not sure the members of this
23 committee would like, but it does seem to me that
24 perhaps monthly -- the monthly summaries that are
25 prepared internally with regard to claims processing,

CARPENTER REPORTING, INC.
(303) 752-1200

1 how many come in, what their status is, and so on, if
2 that could be provided on a monthly basis to the
3 members of this committee, I think that might be
4 helpful. Would that be possible?

5 MS. KIMPAN: Yes.

6 CHAIRWOMAN SPIELER: Okay. Great. Is
7 there other information that this committee feels we
8 would like to have provided to us by OWA during this
9 intervening time?

10 Okay.

11 DR. WAGNER: Only as stated earlier,
12 the -- there's a contractor working on defining a
13 process flow and the specifics that -- of the
14 parameters that OWA is going to be tracking and as that
15 develops, we'd like to receive drafts and be in
16 communication. Les would be taking the lead on that.

17 CHAIRWOMAN SPIELER: Right. Would Les
18 take the lead on that? Les, should that go to the
19 entire committee or to the members of your
20 subcommittee?

21 MR. BODEN: What I'm hoping to do, I
22 talked to -- to Vern about this and he's going to talk
23 to his client in DOE. What I'm hoping to do is to
24 establish some sort of iterative process where he --
25 where they will give us information on how things -- on

CARPENTER REPORTING, INC.
(303) 752-1200

1 how things are unfolding from their end and we'll
2 provide them with feedback.

3 I think the subcommittee is small enough
4 that they could e-mail all four of us -- however many
5 there are, five -- and that we could provide them with
6 feedback. So that's what I envisioned.

7 If you have any other thoughts about
8 that, I would be, you know -- I'd be happy to
9 facilitate it, but I don't see any reason why I should
10 be the only person providing the feedback or why I
11 should be a bottleneck for other people to provide the
12 feedback.

13 CHAIRWOMAN SPIELER: You don't think
14 that the entire committee has to be involved in this
15 process at this point, do you?

16 MR. BODEN: No, I don't. I think we
17 should try to be sensitive as a subcommittee, for
18 example, if physician panel quality control issues come
19 up that we should try at least to -- to solicit input
20 and maybe, Greg, you could be our sort of -- since
21 you're on both subcommittees, you could essentially be
22 the liaison for those issues when they arise.

23 CHAIRWOMAN SPIELER: And for any State
24 agency or contractor insurer relations issue, John
25 Burton would perform the same function.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. BODEN: Yes.

2 CHAIRWOMAN SPIELER: Okay. Great. We
3 have outstanding the minutes from the prior meeting and
4 it would be helpful if sometime over the next, say,
5 four weeks, people could take a look at them and if
6 there are specific amendments you'd like to make, let
7 me know. Four to six weeks?

8 And finally, we need to -- Steve
9 suggested that we discuss the utility of coming to
10 Denver for this meeting, but we need to discuss the
11 sort of where and when of when this committee would
12 meet again. And I guess I would ask if there's any
13 thoughts about that from the OWA folks before we sort
14 of launch into a discussion here.

15 MS. KIMPAN: We're thought free.

16 CHAIRWOMAN SPIELER: But, hopefully, not
17 while you're rewriting the rule. And not --

18 MS. KIMPAN: We're reserving our thought
19 for all of the other assignments.

20 MR. BLEA: Jeff has a question.

21 MR. EAGAN: The only question is the
22 issue of the expenses of where meetings are placed
23 and --

24 CHAIRWOMAN SPIELER: Is it substantially
25 cheaper to do it in Washington?

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. EAGAN: Yes. Particularly, our
2 administrative people have cited the ability to get
3 lower Government rate fares to bring committee members
4 to Washington as opposed to paying more market rate
5 fares --

6 CHAIRWOMAN SPIELER: I have to say I was
7 shocked by the cost of my ticket. I'm definitely --

8 MR. EAGAN: Costs are up, and this is
9 a -- I'll just say this is a -- a concern of our
10 administrative and financial people.

11 MS. KIMPAN: We're also unable to invite
12 other people.

13 MR. BODEN: I'm on other committees
14 where I have gone to locations that were not
15 headquarters locations for committee meetings and the
16 Federal agency has bought my ticket at Federal agency
17 cost. So I'm a little puzzled --

18 MS. KIMPAN: It's about the logistics, I
19 believe, and you know, we're sort of combining what we
20 know about it and none of us is an attorney. We have
21 different constraints if we're holding it outside of
22 D.C. So we can use different kinds of ability to
23 purchase tickets and we can invite other people and the
24 like.

25 I believe if it's held locally -- if we

CARPENTER REPORTING, INC.
(303) 752-1200

1 are all traveling to here, I think we must do things
2 differently and that the effect of that is increasing
3 the price. I don't know that --

4 CHAIRWOMAN SPIELER: In any event, let's
5 not spend our time on this, please, because we have a
6 limited amount of time. I was going to suggest, in any
7 event, in order to cut this short, given my own
8 personal circumstances, that we meet in Washington next
9 time.

10 MR. EAGAN: Or Ireland.

11 CHAIRWOMAN SPIELER: Yes, I know you all
12 want to come to Ireland where I will be. But that
13 aside --

14 MR. SHOR: Meet you halfway.

15 MR. ELISBURG: I would like to say,
16 though, that, you know, I think maybe the next meeting
17 in Washington would make sense, but I think the
18 field -- idea of the field meeting and the idea of
19 coming out here and the idea of being able to hear the
20 people who are really the beneficiaries of this program
21 and being able to meet the staff people who are working
22 on this, it was an enormous value, and I think it's
23 something that ought to be done at least periodically.

24 CHAIRWOMAN SPIELER: I agree.

25 MR. ELISBURG: To that extent, I think

CARPENTER REPORTING, INC.
(303) 752-1200

1 this was an excellent idea to be able to come out here
2 and both have the public -- public session and the
3 ability to go actually see what's going on in the
4 offices.

5 CHAIRWOMAN SPIELER: I actually agree
6 with that. And I think that it was certainly of value
7 to me to be outside of Washington and seeing the
8 Resource Center and talking to people. Perhaps not
9 quite as many as we hoped, but talking to people in the
10 field. And so I absolutely agree, as chair, that,
11 periodically, this is something we should do. Steve?

12 DR. MARKOWITZ: I agree with the idea.
13 I think just the execution in this case was limited.
14 The turnout last night was very -- it was extremely
15 valuable hearing from the people who did come, but they
16 were half a dozen people. Maybe timing was bad because
17 it was a month before the meeting here or the office
18 just opened and it's only a few weeks into it, but
19 whatever happened, there should have been more advance
20 work done to bring people so we could hear from them.

21 I don't think most of our conversation
22 today was highly influenced by what we heard last
23 night, so I agree with the idea. I'd just like to see
24 more effort put in actually benefiting from it.

25 CHAIRWOMAN SPIELER: I think the next

CARPENTER REPORTING, INC.
(303) 752-1200

1 time we do it, we should talk some about how the
2 advertising should be done for the public components.
3 We really don't need to do that today if there's
4 consensus that our next meeting should be in
5 Washington. Is that fair? The next meeting in
6 Washington?

7 MR. BODEN: Yes.

8 CHAIRWOMAN SPIELER: It sounds to me
9 like it'll probably be November or December.

10 MR. BURTON: When are you getting back?

11 CHAIRWOMAN SPIELER: I won't be back.
12 The question would be -- and I had this conversation
13 with Paul Seligman and I would have to have it
14 personally, I think, with the OWA staff as to whether I
15 would come back for a meeting. And that would depend
16 on whatever arrangements we could make. And if I were
17 to come back, my request would be that if it's going to
18 be a two-day meeting, much as some of you might not
19 like this, I would like to have it on a Friday and
20 Saturday because my teaching obligations are going to
21 mean that, otherwise, it's going to be a problem for
22 me.

23 I could do that, but I don't know what
24 the travel regulations are. And otherwise, I won't be
25 back until the first of January. So -- but my

CARPENTER REPORTING, INC.
(303) 752-1200

1 suggestion, I don't think this committee should not
2 meet until 2002 because of my personal luck so -- so
3 I -- what I would suggest is that we agree that we
4 would either meet in sort of shortly before
5 Thanksgiving or shortly after Thanksgiving and we
6 attempt -- does that make sense? And that we
7 attempt -- work with OWA to find some dates. And I'll
8 correspond with them with regard to whether they are
9 willing to bring me back and if not, I'm sure that you
10 can agree on a temporary chair.

11 MR. BURTON: If you write the right kind
12 of letter, Emily, some of our problems about thinking
13 about meetings --

14 CHAIRWOMAN SPIELER: So before we
15 adjourn, though, I called the public comment period
16 early and I would like to reopen the public comment
17 period and ask if there's anyone here who would like to
18 offer public comment to the committee with regard to
19 the committee's deliberations about the worker's
20 compensation issues for the Department of Energy.

21 MR. ELISBURG: Before we adjourn, I have
22 one thing.

23 CHAIRWOMAN SPIELER: Well, given that,
24 then I will again close the public comment period and
25 recognize Don Elisburg.

CARPENTER REPORTING, INC.
(303) 752-1200

1 MR. ELISBURG: Did we thank all the
2 staff people?

3 CHAIRWOMAN SPIELER: I was going to do
4 it. Sometimes the -- the work on this committee has
5 been contentious and frustrating and, particularly, I
6 think that has happened in subcommittee meetings. I
7 want to reiterate what I said in past meetings, which
8 is I don't think there's a person on this committee who
9 doesn't deeply understand how hard the OWA staff are
10 working and how difficult this transitional period has
11 been and that to the extent that the committee is
12 critical of some of the things that have happened, that
13 criticism is truly not directed at any of you, but at
14 our frustration and wanting to make this really the
15 best program that it can be for DOE workers who raised
16 their concerns over the past few years.

17 So on behalf of the committee, again,
18 I'd like to thank the staff of the Office of Workers
19 Advocacy for all the work you do both for us, which I
20 would say is secondary and, more importantly, for
21 getting this program up and running for the workers who
22 are depending on it.

23 I'd also like to thank the others of you
24 who have come both last night and today for offering
25 your thoughts, your concerns, and your observations

CARPENTER REPORTING, INC.
(303) 752-1200

1 because I think it really does help us in thinking
2 about how to make this a better program and what kind
3 of advice to give to the Department of Energy.

4 Is there anything else that anybody on
5 the committee would like to say before we adjourn?

6 Okay. Then we are adjourned and thank
7 you all for coming.

8 (The meeting was adjourned at 2:12 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CARPENTER REPORTING, INC.
(303) 752-1200

